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No.

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1997

ANNE ARUNDEL COUNTY, MARYLAND,
Petitioner,

v.

PARKER ANDREWS, JOSEPH N. BURROWS, LINDA G. FINNELLE, MICHAEL F. GILLIGAN, LEROY JONAS, JR., RICHARD F. MAYER, JOSEPH J. MCCANN, VERONICA MIXTER, JOSEPH H. NOVOTNY, EMOGENE N. PRICE, DENISE RANKIN, ADRIAN G. TEEL, FRANCIS J. ZYLWITIS,
Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

David A. Plymyer
Deputy County Attorney
Counsel of Record

Phillip F. Scheibe
County Attorney
2660 Riva Road
Annapolis, Maryland 21401
(410) 222-7888
Counsel for Petitioner

132pp

QUESTION PRESENTED

1. Does the Contract Clause prevent a county legislative body from reducing the pension benefits of the highest appointed and elected officials of the county if the legislative body determines that the benefits were procured by conduct which constituted a violation of the public trust reposed in those officials?

2. Does the fact that the pension "contract" with the appointed and elected officials was created by an ordinance preclude the consideration of conduct which would render a private contract unenforceable under contemporaneous state law?

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PETITION FOR WRIT OF CERTIORARI

Anne Arundel County, Maryland (the "County") respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The per curiam opinion of the Fourth Circuit (App. 1a) is unreported. The opinion of the U.S. District Court for the District of Maryland (App. 4a) is reported at 931 F. Supp. 1255.

JURISDICTION

The Fourth Circuit entered its judgment on June 13, 1997. (App. 1a). The order denying the Respondents' petition for rehearing was dated July 9, 1997. (App. 40a) The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) (1994).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Contract Clause of the United States Constitution provides:

> No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any title of Nobility.

U.S. Const. Art. 1, § 10, clause 1.

Bill No. 74-95 as enacted by the County Council of Anne Arundel County, Maryland is set forth in full in the appendix to this Petition for Writ of Certiorari (App. 48a).

STATEMENT OF THE CASE

A. Factual Background.

On November 15, 1995, the Anne Arundel County Council enacted Bill No. 74-95, which made changes to the Anne Arundel County Retirement Plan for Appointed and Elected Officials (the "A&E Plan"). (App. 10a ; p.7 of Davis, J. mem. op.). Bill No. 74-95 repealed enhancements to the A&E Plan enacted in 1989 by Bill No. 36-89, restoring the age of "normal retirement" from age 50 to age 60, and returning the "benefit accrual rate" applicable to appointed officials from 2½% to 2%. (p.7 of Davis, J. mem. op.). In the preamble to Bill No. 74-95, the County Council stated that the enhancements to the A&E Plan enacted during the period from 1982 to 1989, particularly those enacted by Bill No. 36-89, "resulted in the underfunding of the Plan and in a pension program which conferred unwarranted, excessive benefits on a select group of participants beyond those which reasonably could have been expected in return for service in the County government . . . ." (74-95 Bill preamble). The County Council further described the enhancements as "drafted and adopted by the same appointed and elected officials who were unjustly enriched by the unwarranted, excessive benefits, amounting to conduct which constituted a violation of the public trust reposed in those officials . . . ." (74-95 Bill preamble).

The A&E Plan was established in 1973, with participation limited to approximately 40 highly-placed officials in the legislative and executive branches of County government, including the members of the County's legislative body, the

Anne Arundel County Council. (JA 112)[1] The A&E Plan was closed to new participants in 1994. The A&E Plan is funded on an actuarial basis by both employer and employee contributions.[2] Pension benefits under the A&E Plan are calculated by multiplying a participant's "final earnings" (the average of the three highest salaries of the participant during the participant's last ten years of service) by a percentage fixed by ordinance (referred to as the "benefit accrual rate"), and then multiplying the result by the number of years of "credited service."

A participant becomes eligible for pension benefits on the participant's "normal retirement date." The normal retirement date is achieved in one of two ways. Since the inception of the A&E Plan in 1973, a participant reaches his or her normal retirement date upon accumulation of 16 years of "credited service," regardless of age. Before Bill No. 36-89, a participant also became eligible for normal retirement when the participant accumulated 5 years of credited service and was at least 60 years old. Bill No. 36-89 modified that to age 50.

"Credited service" is the years of service counted toward eligibility for pension benefits, and includes actual service with the County. (JA 93-97, 184-87). During the years from 1982 to 1989, County legislation was enacted which allowed participants in the A&E Plan to "purchase" prior service with

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[1]"JA ___" will be used to refer to the relevant pages in the Joint Appendix filed in the Fourth Circuit.

[2]A participant's contribution is set by law at 4% of salary. The County is obliged to contribute the remaining amount necessary to maintain the actuarial soundness of the plan. (JA 184).

other employers to apply toward the years of credited service necessary for retirement eligibility under the A&E Plan. (JA 103-04). The formula adopted to calculate the cost to the participants to purchase credited service based on employment with other agencies resulted in amounts paid by the participants which were far short of the amounts necessary to fund the additional benefits attributable to the purchased service, and substantially increased the liabilities of the plan.[3] (JA 103-04, 112-14). The underfunding of the A&E Plan produced by these so-called "buybacks" of credited service generally was secreted from the public. (JA 114). In fact, the formal "Fiscal Note" prepared by the County's Budget Office on a key bill reported that"[s]ince this service must be purchased in full based upon an actuarial determination, there is no cost impact to plan." (JA 135). This gross falsehood was corrected neither by the County's Budget Officer nor by the Personnel Officer, both of whom were participants in the A&E Plan, and both of whom were present during the testimony on the bill.[4] (JA 288-

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[3]The unrebutted expert testimony was that it is rare for a plan requiring only 16 years of service for eligibility for full retirement benefits to allow use of employment with other employers to satisfy that eligibility, and unheard of for such a plan to peg the cost of "purchasing" credited service for that employment at an amount far less than the cost to the plan of funding the resulting benefits. (JA 103-04).

[4]The Personnel Officer, who also was the A&E Plan administrator, was one of the main beneficiaries of the discount buybacks: He retired in 1991 at age 50 (made possible by Bill No. 36-89) with approximately 13 years of credited service, six of which constituted actual service with the County. He purchased 7 years of credited service for employment with other agencies at a one-time cost to him of

358).

In addition to lowering the age of normal retirement, Bill No. 36-89 also increased the benefit accrual rate for appointed officials from 2% to 2 1/2% as applied to the first 20 years of credited service.[5] (2% still applied to any years in excess of 20.) (p.5 of Davis, J. mem. op.). In enacting Bill No. 36-89, the County Council moved with unseemly haste: The Maryland Court of Appeals found that the County Council violated the Maryland constitutional requirement that the title or summary of all proposed ordinances be published once a week for two successive weeks prior to enactment. Schaeffer v. Anne Arundel County, 338 Md. 75, 84-88, 656 A.2d 751, 755-757 (1995).[6] The County's Pension Oversight Commission, charged with reviewing pension legislation, failed to convene a meeting to discuss Bill No. 36-89, and conducted an unprecedented "telephone poll" which reached only six of the nine members. (JA 109-10, 155-56).Nevertheless, when called on to describe the action by the Commission, the Personnel Officer affirmed that the Commission had "reviewed the legislation in detail and covered all aspects of the Bill and saw no problem with the bill." (JA 159-63).

$9,783. This purchase resulted in an increase of approximately $17,813 per year in his pension benefits. (JA 19, 113-14).

[5]Bill No. 36-89 lowered the retirement age for all participants. However, the change in the benefit accrual rate was applied only to appointed officials.

[6]However, Maryland's highest court turned aside on the basis of laches a belated taxpayer suit challenging Bill No. 36-89.

Bill No. 36-89 was passed by the County Council in the absence of two public documents which usually accompany proposed legislation, a Fiscal Note prepared by the Office of the Budget (on behalf of the executive branch), and a report prepared by the County Auditor (on behalf of the legislative branch). (JA 156, 166). In fact, a draft report prepared by an Assistant County Auditor, who was not a participant in the A&E Plan, expressing concern over the lack of a Fiscal Note and the lack of actuarial information concerning the ordinance, was ordered withheld by the Auditor, who was a participant in the A&E Plan. (JA 166-69, 170-71).

Finally, the annual valuation report on the assets and liabilities of the A&E Plan issued on January 1, 1990, misreported the funded status of the plan because, for some reason, the report failed to take into account the increase in the benefit accrual rate and the reduction in the retirement age enacted by Bill No. 36-89. (JA 125). As it happened, the report of January 1, 1990 was the last one issued prior to the election for County Executive and members of the County Council which took place in November, 1990. It was in this historical context that a successor County Council enacted Bill No. 74-95.[7]

B. Procedural History of this Case.

On December 20, 1995, thirteen former appointed and

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[7]The cumulative impact of these enhancements is self-evident. The expanded use of low-cost "buybacks" to attain an accelerated retirement date, coupled with the increased value to the participant of each year of credited service, resulted in an underfunding of the plan's liabilities by $2,110,870 as of January, 1991. (JA 148)

elected officials of the County (the "respondents") filed suit against the County in the Circuit Court for Anne Arundel County, Maryland. The respondents, all participants in the A&E Plan, sought declaratory and injunctive relief rescinding previous modifications to the A&E Plan enacted by Bill No. 61-94,[8] and preventing implementation of the modifications enacted by Bill No. 74-95. The suit alleged that the modifications violated State and County law, as well as the respondents' rights under the Contract Clause secured by 42 U.S.C. § 1983 (1994). (App. 5a-6a; pp. 2-3 of Davis, J. mem. op.).

An ex parte injunction restraining the County from implementing Bill No. 74-95 was issued by the circuit court on December 20, 1995. After an evidentiary hearing, the circuit court extended the ex parte injunction an additional 10 days, and thereafter issued an interlocutory injunction. (App. 5a ; p. 2 of Davis, J. mem. op.).

The respondents filed a motion for partial summary judgment in the circuit court on January 18, 1996, and the County removed the case to the United States District Court for the District of Maryland by notice of removal filed on January 19, 1996. The district court had original jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343 (1994), and removal jurisdiction was invoked pursuant to 28 U.S.C. § 1441 (1994).

The district court stayed discovery pending a hearing on

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[8]Bill No. 61-94 restored the requirement, eliminated in 1987, that participants fund the continuation of pension benefits to their surviving spouses and minor children by accepting an actuarially-determined reduction in benefits during the participants' lives. (App. 65a).

outstanding motions. Prior to the hearing, the County filed a motion for partial judgment on the pleadings as to the claims under 42 U.S.C. § 1983. The district court held that Bill No. 74-95, as applied to the plaintiffs, violated the Contract Clause, although it denied the respondents' claims for relief under 42 U.S.C. § 1983. The remaining claims, including the challenge to Bill No. 61-94, were remanded to the Circuit Court for Anne Arundel County, and the case in the district court was ordered "closed." (App. 35a).

The district court rejected the County's argument that, at the very least, it should be allowed to conduct discovery to uncover the extent of any misconduct which preceded enactment of the offending pension legislation, and to determine the effects of the modifications on the individual respondents. (App. 38a; Davis, J. Order of March 29, 1996 denying discovery). The district court believed that the issue of whether or not chicanery was behind the legislative enactment was immaterial: The district court ruled that, regardless of whether in a private setting an enforceable contract was formed, there was no legal basis to set aside a "contract" created by legislation unless the legislation itself was invalid, illegal or void.

Concluding that Bill No. 74-95 was not reasonable and necessary to serve an important public purpose, the district court held that it violated the rights of the respondents under the Contract Clause. The district court held that Bill No. 74-95 did not violate rights secured under 42 U.S.C. § 1983, and remanded the remaining claims, including the challenge to Bill No. 61-94, to the Circuit Court for Anne Arundel County. The respondents filed a motion to alter or amend judgment which was denied. (App. 37a).

The County noted an appeal to the U.S. Court of

Appeals for the Fourth Circuit. Argument was held before a panel of the Fourth Circuit, and the panel affirmed the decision of the district in an unpublished per curiam opinion entered on June 13, 1997. A timely petition for rehearing was filed by the respondents which was denied by order entered on July 9, 1997. (App. 40a).

REASONS FOR GRANTING THE WRIT

This Court has provided little guidance on the proper balance between the sovereign power of a state to regulate the compensation of its own officers and the limitation imposed on that power by the Contract Clause, and the issue should be settled by this Court. In affirming the memorandum opinion of the United States District Court for the District of Maryland, the Fourth Circuit construed the Contract Clause in a way which rewards state and local officials who enact legislation to benefit themselves in a secretive and deceitful manner. Despite precedent from this Court dictating that state law governing the enforceability of contracts is incorporated by implication into any contract reviewed under the Contract Clause, the Fourth Circuit held that conduct which would render a private contract unenforceable under Maryland law is immaterial when the "contract" is one consummated by an ordinance. The decision of the Fourth Circuit is erroneous, establishes a terrible public policy, and must be corrected.

I. THE FOURTH CIRCUIT HAS DECIDED AN IMPORTANT QUESTION CONCERNING THE BALANCE BETWEEN THE SOVEREIGN POWER OF A STATE AND THE LIMITATIONS IMPOSED ON THAT POWER BY THE CONTRACT CLAUSE THAT HAS NOT BEEN, BUT SHOULD BE, SETTLED BY

THIS COURT.

This Court consistently has recognized that there must be a balance between the Contract Clause's limitation on a state power, and the sovereign power of a state to protect the interests of its citizens, presumably including the power to protect those citizens from the abuses of those who govern them.[9] As described by this Court, the "principal function of a legislative body is not to make contracts but to make laws which declare the policy of the state and are subject to repeal when a subsequent legislature shall determine to alter that policy." Indiana ex rel. Anderson v. Brand, 303 U.S. 95, 100 (1938). Notwithstanding the prohibition of the Contract Clause, a state "continues to possess authority to safeguard the vital interests of its people". Home Bldg & Loan Ass'n v. Blaisdell, 290 U.S. 398, 434-435 (1934).

Consequently, "the reservation of essential attributes of sovereign power is . . . read into contracts as a postulate of the legal order." Id. at 435. Under this "reserved power doctrine," a legislature cannot "bargain away the public health or the public morals." Id. at 436. There must be a balance between the sovereignty of a state and the limitations imposed on it by the Contract Clause:

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[9]Anne Arundel County, Maryland, with a population of approximately 459,700, is a major unit of metropolitan government, with approximately 3,500 employees. As a chartered ("home rule") county, Anne Arundel County exercises the police power of the State of Maryland to the extent delegated by the Maryland General Assembly. See Montgomery Citizens League v. Greenhalgh, 253 Md. 151, 252 A.2d 242 (1969).

> Undoubtedly, whatever is reserved of state power must be consistent with the fair intent of the constitutional limitation of that power. The reserved power cannot be construed so as to destroy the limitation, nor is the limitation to be construed to destroy the reserved power in its essential aspects. They must be construed in harmony with each other.

Id. at 439. Regulation of the compensation, including pensions, of its officers is an essential element of the sovereignty of a state. See Maryland State Teachers Ass'n v. Hughes, 594 F. Supp. 1353, 1362 (D. Md. 1984), aff'd, No. 84-2213 (4th Cir. December 5, 1985).

Under the traditional balancing test between reserved state power and private contractual obligations, an impairment of a contractual obligation nevertheless may be saved against constitutional infirmity if it is reasonable and necessary to the accomplishment of a legitimate public purpose. United States Trust Co. v. New Jersey, 431 U.S. 1, 21-26 (1977). The reported cases in which a change in a pension plan was held to violate the Contract Clause do not include a situation in which the public purpose was the elimination of ill-gotten gains. Cf. Pineman v. Oechslin, 494 F. Supp. 525 (D.C. Conn. 1980), vacated on other grounds 637 F.2d 601 (2d Cir. 1981) (increase in retirement age applied only to male employees); Board of Trustees of Pub. Employees' Retirement Fund v. Hill, 472 N.E.2d 204 (Ind. 1985), Betts v. Board of Admin.of Pub. Employee Retirement Sys., 582 P.2d 614 (Cal. 1978), Wagoner v. Gainer, 279 S.E.2d 636 (W. Va. 1981) (redefining "salary" for purposes of calculating pension benefits).

The decision of the court below reduced the balancing test between these two great principles to a purely economic analysis, finding no fiscal "emergency" which would justify a

commensurate reduction in benefits. (App. 28a; Davis, J. mem. op.). The court never gave any consideration to the possibility that the manner in which the officials had bestowed benefits upon themselves constituted sufficient justification for the elimination of those benefits. (App. 23a-24a). This Court has not addressed the issue of whether or to what extent the Contract Clause restrains a local or state government from correcting abuses by its highest officials of the type described in the case *sub judice*.[10] This case provides the Court with an opportunity to resolve that important question.

II. THE FOURTH CIRCUIT'S REJECTION OF CONTEMPORANEOUS STATE LAW PERTAINING TO CONTRACT ENFORCEMENT CONFLICTS WITH RELEVANT DECISIONS OF THIS COURT.

The Contract Clause does not prohibit the States from repealing or amending statutes generally, or from enacting legislation with retroactive effects. United States Trust Co., 431 U.S. at 17. As a threshold inquiry under Contract Clause analysis, a court must determine whether state legislative action had the effect of impairing an enforceable contractual obligation created by state law. Id.

In pertinent part, Bill No. 74-95 decreased the benefit accrual rate for appointed officials from 2½% to 2% for all years of credited service, and increased the normal retirement age for both appointed and elected officials from 50 to 60. It

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[10]The District Court described the benefits which were enacted into law as "extraordinarily generous." (App. 26a n.10; p. 22 n.10 of Davis, J. mem. op.).

was Bill No. 36-89 which increased the benefit accrual rate for appointed officials from 2% to 2½% for the first 20 years of credited service, and reduced the normal retirement age to age 50 for all participants in the A&E Plan. Consequently, the Contract Clause is not implicated unless Bill No. 36-89 gave rise to a contractual obligation by the County to provide those benefits to the plaintiffs. (App. 24a; p. 20 of Davis, J. mem. op.).

For purposes of Contract Clause analysis, it is presumed that an act fixing the compensation of a public official is not intended to create private contractual rights. See, e.g., Dodge v. Board of Educ., 302 U.S. 74, 78-79 (1937). An official who asserts the creation of a contract with the state in such a case has the burden of overcoming that presumption. Id. The answer to whether legislation creates a contract protected by the Contract Clause ultimately depends on the law of the state in which the legislation was enacted. See Kestler v. Board of Trustees, 48 F.3d 800, 803 (4th Cir. 1995) cert. denied, ___ U.S. ___, 116 S. Ct. 186 (1995); Koch v. Yunich, 533 F.2d 80, 86 (2d Cir. 1976). Under Maryland law, pension plans of local governments generally create contractual duties toward persons with vested rights under the plans. See Board of Trustees of the Employees' Retirement Sys. v. City of Baltimore, 317 Md. 72, 100, 562 A.2d 720, 733 (1989), cert. denied sub nom. Lubman v. City of Baltimore, 493 U.S. 1093 (1990). However, it is equally true that, under Maryland law, certain conduct by a party claiming benefits under a contract may render that contract invalid or unenforceable. See, e.g., Carozza v. Peacock Land Corp., 231 Md. 112, 121, 188 A.2d 917, 921 (1963).

When reviewing contracts for purposes of the Contract Clause, courts must regard the "contemporaneous state law pertaining to [contract] interpretation and enforcement" as effectively incorporated into contracts, even if the parties have

not expressly incorporated it. See United States Trust Co., 431 U.S. at 19, n. 17. Furthermore, the Contract Clause does not protect expectations that are based upon contracts that are invalid, illegal, unenforceable, or which arise without the giving of consideration. See, e.g., Walsh v. Board of Admin. of the Pub. Employees Retirement Sys., 6 Cal. Rptr. 2d 118 (Cal. Dist., 1992 cert. denied ___ U.S. __, 113 S. Ct. 484 (1992), citing Crane v. Hahlo, 258 U.S. 142, 146 (1922) and Ochiltree v. Iowa R.R. Contracting Co., 88 U.S. 249, 252-253 (1874).

It was at this juncture of Contract Clause analysis that the district court made a critical distinction, and rejected the County's argument that general contract principles may be used to invalidate a pension "contract" created by legislative enactment. The court conceded that legislation which creates contractual obligations must be "treated as a contract" (citing United States Trust Co., 431 U.S. at 17, n.14), but observed that this does not mean that the legislation itself is a contract. Under the court's reasoning, conduct which would invalidate a private contractual relationship is insufficient to void a "legislative contract"; in other words, the contractual obligations created by Bill No.36-89 remain enforceable unless Bill No. 36-89 itself was "invalid, illegal or constituted void legislation".[11] (App. 24a). Such a construction of Contract Clause principles places the County in an impossible dilemma: In Maryland, as in all

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[11]As discussed above, the Maryland Court of Appeals did conclude that the unconstitutional actions of the County Council resulted in the invalid enactment of Bill No. 36-89. See Schaeffer, 338 Md. at 84-88, 656 A.2d at 755-757 (1995). However, the court held that the legislation could not be voided by the courts because of the application of the common law doctrine of laches. Id. at 83-84, 656 A.2d at 755.

states, the motives of legislators generally do not form a basis for invalidating the legislation through litigation. See Sugarloaf Citizens Ass'n v. Gudis, 319 Md. 558, 577-578, 573 A.2d 1325, 1335 (1990). On the other hand, the district court's construction places the Respondents in the best of possible legal worlds: They may invoke the Contract Clause to protect them from the consequences of their own conduct, including conduct which, if demonstrated in the context of a private contractual relationship, would render the contract unenforceable.

Under Maryland law, misrepresentation of a material fact may render a contract unenforceable. See, e.g., Carozza, 231 Md. at 121, 188 A.2d at 921 (1963). A fact is material if its existence or nonexistence is a matter to which a reasonable person would attach importance in determining the person's choice of action in the transaction, or the maker of the misrepresentation knows that its recipient is likely to regard the fact as important. Id. A higher duty is placed on individuals who stand in a confidential or fiduciary relationship to the party against whom they seek to enforce a contract. See Wenger v. Rosinsky, 232 Md. 43, 49-50, 192 A.2d 82, 86-87 (1963). The burden shifts to those in a confidential or fiduciary relationship to show by clear and convincing evidence that they did not take advantage of the confidential relationship for their own benefit. Id. Common-law fiduciary duties are incorporated by implication into the "legislative contract" created by a local government pension plan. Cf. Board of Trustees of the Employees' Retirement Sys., 317 Md. at 102, 562 A.2d at 734)(pension contracts created by ordinance incorporated the common-law duties of prudence and loyalty imposed on the Trustees of the Retirement System).[12]

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[12]Under Article 6 of the Declaration of Rights in the Maryland Constitution, the duties of all public officials are

Enforceability of contracts in Maryland also may depend on principles of public policy. Maryland courts are hesitant to strike down voluntary bargains on public policy grounds, doing so only in those cases where the challenged agreement is patently offensive to the public good; that is, where "the common sense of the entire community would... pronounce it" invalid. Maryland-Nat'l Capital Park and Planning Comm'n v. Washington Nat'l Arena, 282 Md. 588, 606, 386 A.2d 1216, 1228 (1978). As described by the Maryland Court of Appeals, it is the function of a court in applying such public policy principles to balance the public and private interests in securing enforcement of the disputed promise against those policies which would be advanced were the contractual term held invalid. Id. at 607, 386 A.2d at 1229. Enforcement will be denied where the factors that argue against implementing the particular provision clearly and unequivocally outweigh "the law's traditional interest in protecting the expectations of the party, its abhorrence of any unjust enrichment, and any public interest in the enforcement" of the contested term. Id.

In Fletcher v. Peck, 10 U.S. (6 Cranch) 87 (1810), this Court expounded principles limiting the exercise of both judicial and legislative power. The Court first declined to entertain a plea that an act of the Georgia legislature, approving a sale of state land, be set aside by the Court because of the "impure motives" of the legislators. Id. at 127-131. The Court next held that a subsequent Georgia legislature could not rescind the act of the previous legislature in order to defeat a private conveyance to an innocent third party. Id. at 131-135. For purposes of its decision, the Court assumed that the

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fiduciary in character and are to be exercised as a public trust. See Kerpelman v. Board of Pub. Works, 261 Md. 436, 445, 276 A.2d 56, 61, cert. denied, 404 U.S. 858 (1971).

subsequent legislature had ample proof that the act authorizing the original conveyance of land was procured by political corruption. Id. at 134.

In explaining why the title of the innocent purchaser could not be impaired by the act of the subsequent legislature, Chief Justice Marshall writing for the court, stated as follows:

> This estate was transferable; and those who purchased parts of it were not stained by that guilt which infected the original transaction. Their case is not distinguishable from the ordinary case of purchasers of a legal estate without knowledge of any secret fraud which might have led to the emanation of the original grant. According to the well known course of equity, their rights could not be affected by such fraud.

Id. at 134-135. Chief Justice Marshall further reasoned: "[If an act be done under a law, a succeeding legislature cannot undo it. The past cannot be recalled by the most absolute power." Id. at 135.

The limitation on legislative power announced in Fletcher v. Peck should not be extended to preclude a legislature from discontinuing benefits secured through the excesses of its own and other officers of the government. In enacting Bill No. 74-95, the Anne Arundel County Council did not try to recall the past, it acted to right a continuing wrong by halting the payment of certain benefits to County officials in the future.[13]

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[13]Bill No. 74-95 did not attempt to recoup benefits already paid; the reduction in benefits was prospective from the effective date of the ordinance.

The responsibility for the exploitation of the A&E Plan from 1983 through 1989 does not rest solely with one or two individuals: The outright misrepresentation of the fiscal impact of purchases of credited service during the hearing on Bill No. 56-87; the failure of the County Council to advertise Bill No. 36-89 in the manner required by the Maryland Constitution; the failure to convene a meeting of the Pension Oversight Commission to review Bill No. 36-89; the withdrawal by the County Auditor of a cautionary note on Bill No. 36-89; the absence of a Fiscal Note and Auditor's report on Bill No. 36-89; and the mysterious failure of a formal report on the status of the A&E Plan issued shortly after the enactment of Bill No. 36-89 to include the increased benefit accrual rate and the reduced retirement age in the calculation of the plan's liability, all suggest the complicity of numerous appointed and elected officials at the pinnacle of power.[14] These officials used their unique ability to influence and adopt County legislation in order to bestow inordinately generous pension benefits on themselves and their colleagues. The Fourth Circuit's conclusion that none of this was of any moment in the face of a "legislative contract" disregards an entire body of case law developed by this Court.

III. THE DECISION OF THE COURT OF APPEALS IS ERRONEOUS

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[14]The Respondents are a representative cross-section: In addition to the individuals previously mentioned, one was a member of the County Council; another was the Assistant Administrative Officer to the County Council; another was the Chief Administrative Officer of the County (second in command to the County Executive), and a fourth was the County Controller, one of the group of officials who participated directly in County pension policy.

United States Trust Co., supra, which "revived" the Contract Clause as a limitation on state power, was decided by a four-justice plurality, with two justices not participating. In his dissenting opinion, Justice Brennan, with whom Justices White and Marshall joined, reminded the plurality that "the framers of our Constitution conceived of the Contract Clause primarily as protection for economic transactions entered into by purely private parties, rather than obligations involving the State itself." 431 U.S. at 45. He went on to comment:

> The Framers fully recognized that nothing would so jeopardize the legitimacy of a system of government that relies upon the ebbs and flows of politics to 'clean out the rascals' than the possibility that those same rascals might perpetuate their policies simply by locking them into binding contracts.

Id. The County respectfully argues that neither the Framers of the Constitution nor this Court ever envisioned that the Contract Clause could be used by those same "rascals" to perpetuate pension benefits which they conferred on themselves through conduct inconsistent with their responsibilities as public officials. The Fourth Circuit, by adopting the memorandum opinion of the District Court, erroneously construed the Contract Clause not as a protection of the governed from those who govern, but as a tool to protect from modification whatever "contractual" benefits of employment those who govern can finagle into law.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

David A. Plymyer
Deputy County Attorney
Counsel of Record

Phillip F. Scheibe
County Attorney
2660 Riva Road, 4th Floor
Annapolis, Maryland 21401
(410) 222-7888
Counsel for Petitioner

Appendix

APPENDIX A

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-2463

PARKER ANDREWS; JOSEPH N. BURROWS; LINDA G. FINNELLE; MICHAEL F. GILLIGAN; LEROY JONAS, JR.; RICHARD F. MAYER; JOSEPH J. McCANN; VERONICA MIXTER; JOSEPH H. NOVOTNY; EMOGENE N. PRICE; DENISE RANKIN; ADRIAN G. TEEL; FRANCIS J. ZYLWITIS,
Plaintiffs-Appellees,

v.

ANNE ARUNDEL COUNTY, MARYLAND,
Defendant-Appellant.

No. 96-2465

PARKER ANDREWS; JOSEPH N. BURROWS; LINDA G. FINNELLE; MICHAEL F. GILLIGAN; LEROY JONAS, JR.; RICHARD F. MAYER; JOSEPH J. McCANN; VERONICA MIXTER; JOSEPH H. NOVOTNY; EMOGENE N. PRICE; DENISE RANKIN; ADRIAN G. TEEL; FRANCIS J. ZYLWITIS,
Plaintiffs-Appellants,

v.

ANNE ARUNDEL COUNTY, MARYLAND,
Defendant-Appellee.

Appeals from the United States District Court for the District of Maryland, at Baltimore.
Andre M. Davis, District Judge.
(CA-96-173-AMD)

Argued: May 5, 1997

Decided: June 13, 1997

Before WILKINSON, Chief Judge, and RUSSELL and WILLIAMS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

ARGUED: David Alan Plymyer, Deputy County Attorney, ANNE ARUNDEL COUNTY OFFICE OF LAW, Annapolis, Maryland, for Appellant. Glen Marshall Cooper, David M. Rothenstein, PALEY, ROTHMAN, GOLDSTEIN, ROSENBERG & COOPER, CHARTERED, Bethesda, Maryland, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36 (c).

OPINION

PER CURIAM:

Retired employees who were receiving benefits under Anne Arundel County's reitrement plan for appointed and elected officals ("the A & E Plan") sued the county arguing that recent, retroactive, legislative adjustments to the A & E Plan violated Maryland law and the Contract Clause of the United States Constitution. The district court found that Bill 74-95, which increased the retirement age to 60 from 50 and decreased benefits for retirees, violated the Contract Clause, reasoning that the County could not go back on its contract to provide pension benefits absent a financial emergency. The district court, however, relying on *Carter v. Greenhow*, 114 U.S. 317 (1885), found that the plaintiffs could not receive attorneys fees because there is no cause of action available under 42 U.S.C. § 1983 for violations of the Contract Clause. Furthermore, the district court found that none of the plaintiffs had standing to challenge bill 61-94, which altered survivor benefits, because none of the plaintiffs had been injured by its application. Lastly, the district court declined to exercise supplemental jurisdiction over plaintiffs' remaining state law claims. Both parties appeal from the district court's decision.

Our review of the record and the appropriate legal standards in this case persuades us that the decision of the district court was correct. We therefore affirm the judgment on the reasoning set forth in the district court's extensive and careful memorandum opinion. *Andrews v. Anne Arundel County*, 931 F. Supp. 1255 (D. Md. 1996).

AFFIRMED

APPENDIX B

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

Civil Action No. AMD 96-173

PARKER ANDREWS, et al.,

v.

ANNE ARUNDEL COUNTY, MARYLAND

MEMORANDUM OPINION

I. INTRODUCTION

The plaintiffs are 13 former appointed and elected officials of Anne Arundel County, Maryland, all but one of whom retired from county employment between 1990 and 1994 pursuant to provisions of the County Retirement Plan for Appointed and Elected Officials (the "A & E Plan"). The defendant is Anne Arundel County— a chartered Maryland county ("the County"). Md. Code Ann., Art. 25A (1957, 1994 Repl. Vol.).

In 1994 and 1995, the County Council adopted, and the County Executive signed into law, Bill Nos. 61-94 and 74-95, respectively. The express purpose of these enactments was to reduce retroactively pension benefits ordinarily payable to plaintiffs and plaintiffs' survivors, and otherwise to effect cost-saving changes in the A & E Plan. Plaintiffs filed this action to enjoin the application of these bills to them and to recover lost benefits.

This action was originally filed in the Circuit Court for Anne Arundel County, Maryland. The plaintiffs' initial

pleading was a complaint for ex parte and interlocutory injunctive and other relief. The circuit court issued an ex parte injunction (i.e., TRO), on or about December 20, 1995, and it held an evidentiary hearing on January 2, 1996. On January 4, 1996, the court extended the ex parte injunction and it issued an interlocutory injunction on January 18, 1996. The January 18, 1996, injunction ordered that (1) pension benefits being paid under the A & E Plan not be reduced pursuant to County Bill No. 74-95, and (2) the provisions of Bill No. 74-95, which increased the age of retirement from 50 to 60 and decreased the benefit formula from 2.5% to 2% of final average earning for each year of credited service (under 20 years), not go into effect. The provision of the bill reducing the minimum annual pension for certain individuals from $4,800 to $1,200, was specifically excluded from the scope of the injunction.

Contemporaneously, the plaintiffs moved for partial summary judgment. The County timely removed the case to this Court on January 19, 1996, based on federal question jurisdiction. Currently pending are the plaintiffs' motion for partial summary judgment; plaintiffs' motion for leave to amend their complaint; the County's motion for judgment on the pleadings; and the plaintiffs' second motion for partial summary judgment. A hearing on all outstanding motions was held on May 20, 1996.

II. CLAIMS PRESENTED

The plaintiffs' complaint consists of four counts: a claim under the Anne Arundel County Code (count I); a claim under the Contract Clause to the U.S. Constitution (count II); a claim

"for violation of" 42 U.S.C. § 1983 (count III); and a claim for relief under the Maryland Uniform Declaratory Judgment Act (count IV).[1]

I am persuaded, in light of familiar summary judgment standards, *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), that plaintiffs are entitled to summary judgment on their claim that the County's retroactive divestment of their pension benefits violates the Contract Clause. I decline, however, to forecast that the Supreme Court will overrule on of its century-old precedents; I shall grant summary judgment in favor of the County as to the claim under 42 U.S.C. § 1983. Furthermore, all federal claims being thus adjudicated, I decline to go further to exercise supplemental jurisdiction over the non-federal claims. Accordingly, a declaratory judgment shall be entered as to the Contract Clause claim, and in the exercise of discretion appropriate to the circumstances of this case, the remaining state claims shall be remanded to state court for further proceedings, including amendment of the complaint.

III. FACTS

A. Background

Section 814 of the Anne Arundel County Charter

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[1]Plaintiffs have sought to amend the complaint. The proposed amendments would (1) recast and correct certain allegations of fact, (2) join an additional party-plaintiff, (3) add a prayer for monetary relief, and (4) add a fifth count pursuant to Art. XI-A, § 3 of the Maryland Constitution, relating to the advertisement of proposed County legislation. For the reasons discussed *infra*, the motion to amend shall be neither granted nor denied, but may be considered by the state court upon the remand.

provides for the establishment of pension benefits for all county employees "who are not covered by the State Retirement System . . . ." Accordingly, the County sponsors five pension plans, including the A & E Plan. Under the A & E Plan, the participant's benefits are calculated pursuant to a percentage of the participant's final average earning multiplied by the participant's years of service. As the A & E Plan was ultimately amended, years of service are credited by either (1) performing work for the county; (2) transferring years of service earned at another specified benefit plan within the State of Maryland; or (3) purchasing years of service credit for service performed with certain other public employers, within or without the State of Maryland. The Plan is funded by both employer and employee contributions.

The plaintiffs are seeking injunctive and other relief from County Council Bill Nos. 61-94 and 74-95, which affect their pension benefits from the County. The plaintiffs argue that those bills are unconstitutional and otherwise invalid in that they purport to reduce retroactively the pension benefits of those individuals that are already retired and participating in the A & E Plan. The Plan was closed in 1994 to new members. There are currently fewer than 100 members in the A & E Plan.[2]

B. Legislative Enhancements of Benefits Under the A & E Plan

On November 2, 1987, Anne Arundel County Council Bill No. 56-87 was enacted. The bill, *inter alia*, increased the A & E Plan participant's death benefit to a benefit equal to the participant's monthly pension benefit. The previous benefit had

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[2]The actual number is in dispute.

been a "cash refund" benefit in which the beneficiary (spouse or dependent child) received a refund of the participant's contributions less any retirement benefits already received.

On May 17, 1989, Anne Arundel County Council Bill No. 36-89 was enacted, amending Art. 7, § 3-207(a) of the Anne Arundel County Code to read as follows:

> Each appointed official who retires on or after the normal retirement date who has been credited with five years of service is entitled to receive, commencing on the first day of the month coinciding with or next following the date of retirement, an annual pension equal to the greater of:
>
> (1) $4,800; or
>
> (2) 2½% of the final earnings for each year of credited service which is not in excess of 20 years, plus an additional 2% of final earnings for each year of credited service after 20 years; but the maximum pension may not exceed 70% of final earnings.

It also amended § 3-101(i) of the County Code, defining the "normal retirement age" as "the first day of the month after the earlier of a participant's 50th birthday or the date as of which a participant completes 16 years of service." The bill became effective on July 1, 1989, and applied only to those officials who retired from county employment subsequent to July 1, 1990. The asserted reason for these generous amendments to the A & E Plan was to provide an incentive for high level executive department appointees to remain in service during the "lame-duck" final term of the then County Executive. All the

plaintiffs to this action are retired except plaintiff Ranking, who terminated her employment with the County (but did not retire) after approximately seven years of service.

C. Legislative Reductions in Benefits Sponsored by the New County Executive

In 1990, a new County Executive was elected. Not long after the new County Executive assumed office, and throughout the early 1990's, it became increasingly apparent to the County that the A & E Plan enacted which prospectively eliminated or reduced some A & E Plan benefits.[3] In response, several bills were enacted which prospectively eliminated or reduced some A & E Plan benefits.[4] In addition, in July 1994, county Council Bill No. 61-94 was enacted. Bill No. 61-94, effective September 1994, applied retroactively to all participants who

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[3]When it became underfunded, to what degree it was underfunded, and the causes of its underfunding are in dispute.

[4]Bill No. 23-91 increased the normal retirement age to the earlier of age 60 or upon completion of 16 years of service. The bill applied only to those officials appointed or elected after December 1, 1990.

Bill No. 48-93 increased the normal retirement age to the earlier of age 60 or age 55 with completion of 30 years of service. It also eliminated the $4,800 minimum benefit, and it reduced the benefit formula for appointed officials to 2% of the final average earnings for years of service not in excess of 10 years, plus an additional 2½% for years in excess of 10. This bill applied only to those officials appointed or elected after June 30, 1993. Neither bill affects the plaintiffs.

had retired since December 19, 1987. It provided that the participant's surviving spouse was ineligible for death benefits unless the participant (1) had been at least 50 years old at retirement, (2) had at least 12 years of service, and (3) had been married to the surviving spouse for at least one year. In addition, the bill changed the death benefit payable to a surviving spouse and minor children to the greater of $120 or 50% of the retiree's accrued pension benefit.[5]

On November 15, 1994, County Council Bill No. 74-95 was enacted, effective, in part, on December 30, 1995, and, in part, on January 1, 1996. Bill No. 74-95 amended County Code §§ 3-101 and 3-207, retroactively repealing Bill No. 36-89. In effect, for persons in plaintiffs' status, it increased the retirement age to age 60, and it decreased the benefits formula from 2.5% to 2%. Had the state court not issued its injunctions and allowed Bill No. 74-95 to go into effect as planned, the result would have been a substantial reduction in the current monthly payments to all of the retired plaintiffs.

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[5]The only plaintiff affected so far by Bill No. 61-94 is plaintiff Jonas. Jonas retired in 1991, but upon the adoption of Bill No. 61-94 in 1994, he reduced his benefits in order to preserve his spouse's entitlement to a survivor's benefit should he predecease her. Upon the remand of this case, it shall be open to the state court whether Jonas (and/or perhaps, whether his spouse) has effectively waived any claim by failing to challenge the application to him/her of Bill No. 61-94. Arguably, one might suppose, there must be some consequence arising from a voluntary decision not to fight. Seemingly, none of the other plaintiffs have standing to challenge Bill No. 61-94, but this issue need not be further explored.

IV. ANALYSIS OF CONTRACT CLAUSE CLAIM

Article I, § 10, cl. 1 of the U.S. Constitution states: "No State shall . . . pass any Law impairing the Obligation of Contracts . . . ." This clause is commonly known as the Contract Clause. It has been held that the clause does not work an absolute prohibition on the rights of the States to impair contractual obligations. Nonetheless, the State's right to do so is limited to proper exercises of its police power. The Supreme Court has set forth a framework for analyzing claims of state impairment with both public and private contracts.

In *United States Trust Co. Of New York v. New Jersey*, 431 U.S. 1 (1977), the Court held that a New Jersey statute violated the Contract Clause by effecting a retroactive repeal of a 1962 covenant with New York and New Jersey Port Authority bondholders. The covenant limited the ability of the Port Authority to subsidize rail passenger transportation with revenues and reserves. According to the Court, less drastic means of achieving the State's goals were at its disposal.

In holding that the statute in question had created a contract, the Court explained that

> [i]n general, a statute is itself treated as a contract when the language and circumstances evince a legislative intent to create private rights of a contractual nature enforceable against that State. Compare *Dodge v. Board of Education*, 302 U.S. 74, 78-79, 58 S.Ct. 98, 100, 82 L. Ed. 57 (1937), with *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 104-105, 58 S. Ct. 443, 447-448, 82 L. Ed. 685 (1938). In addition, statutes governing the interpretation and enforcement of contracts may be regarded as

> forming part of the obligation of contracts made under their aegis.

Id. at 17 n.14. Moreover, the Court held that "[t]he obligations of a contract long have been regarded as including not only the express terms but also the contemporaneous state law pertaining to interpretation and enforcement." *Id.* at 19 n.17 (collecting cases).

As with interference with private contracts, the Court determined that "the Contract Clause does not prohibit the States from repealing or amending statues generally, or from enacting legislation with retroactive effects." *Id.* at 17. Nonetheless, "laws intended to regulate existing contractual relationships must serve a legitimate public purpose." *Id.* at 22 (citing *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398, 444-45 (1934)). Thus, the Court explained,

> [l]egislation adjusting the rights and responsibilities of contracting parties must be upon reasonable conditions and of a character appropriate to the public purpose justifying its adoption. As is customary in reviewing economic and social regulation, however, courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure.

Id. at 22-23 (citations and footnote omitted). The Court held, however, that "[i]n applying this standard . . . complete deference to a legislative assessment of reasonableness and necessity is not appropriate because the State's self-interest is at stake." *Id.* at 25-26. For example, "a State cannot refuse to meet its legitimate financial obligations simply because it would prefer to spend the money to promote the public good

rather than the private welfare of its creditors." *Id.* at 29.

The Court then set forth the yardsticks by which the necessity and reasonableness of the particular legislative enactment was to be measured. "The determination of necessity can be considered on two levels": (1) was this particular modification necessary or was a "less drastic modification" available to achieve the State's goals; and (2) was there a means to achieve the State's goals without altering the contractual terms at all. *Id.* at 29-30. "[A] State is not free to impose a drastic impairment when an evident and more moderate course would serve its purposes equally well." *Id.* at 31.

As for determining the reasonableness of the State's actions, the Court held that "[t]he extent of impairment is certainly a relevant factor . . . ." *Id.* at 27. More importantly, however, is a determination of whether the effects which the State intends to remedy by the modification "were unforeseen and unintended by the legislature when [the statute was] originally adopted." *Id. See also id.* at 31 n.30 ('the elimination of unforeseen windfall benefits [are] a reasonable basis for sustaining changes").

The Court elaborate further the following year in *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234 (1978). In *Spannaus*, the Court held that a 1974 Minnesota act violated the Contract Clause. The act imposed a "pension funding charge" on employers if certain condition were met. The impact upon the particular employer's voluntary pension plan was substantial and severe. The act retroactively modified the compensation that the employer had agreed to pay its employees from 1963 to 1974 by changing the employer's obligations in the essential area of funding the plan (it required a 10-year vesting requirement). In addition, the act required the employer to make all the retroactive changes simultaneously. The Court

also found no evidence of "an important general social problem" warranting the state's intrusion on the employers' contract rights.

The *Spannaus* Court explained that the Contract Clause, although a serious restraint on State power, is not to be read literally. *Id.* at 240-42. Most importantly, "it is to be accepted as commonplace that the Contract Clause does not operate to obliterate the police power of the States . . . . '[T]he sovereign right of the Government to protect the lives, health, morals, comfort and general welfare of the people . . . is paramount to any rights under contracts between individuals.'" *Id.* at 241 (quoting *Manigault v. Springs*, 199 U.S. 473, 480 (1905). Nonetheless, the Court explained that the Contract Clause does restrain the power of the States, even as to their exercise of their "otherwise legitimate police power." *Id.* at 242.[6]

The *Spannaus* Court also reviewed the Court's earlier decision in *Home Building & Loan Ass'n v. Blaisdell*, 290 U.S. 398 (1934). In *Blaisdell*, a Contract Clause challenge to a temporary mortgage moratorium enacted to provide relief for homeowners threatened with foreclosure was unsuccessful. *Id.* at 242. The *Spannus* Court noted that the Court in *Blaisdell* found five factors determinative in its decision that the State's exercise of power was lawful:

(1) The act itself stated that its purpose was to meet

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[6]Significantly, for present purposes, the Court, reviewing its opinion in *United States Trust Co., supra*, observed that "impairments of a State's own contracts would face more stringent examination under the Contract Clause than would laws regulating contractual relationships between private parties . . . ." 438 U.S. at 244 n.15.

emergency conditions;

(2) the act sought "to protect a basic societal interest, not a favored group";

(3) relief was narrowly tailored to meet emergency needs;

(4) "the imposed conditions were reasonable"; and

(5) "the legislation was limited to the duration of the emergency."

Spannaus, 438 U.S. at 242 (citing *Blaisdell*, 290 U.S. at 444-47). *Accord Energy Reserves Grp., Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 410 n.11 (1983).

After taking a survey of Contract Clause jurisprudence, the *Spannaus* Court identified the following fundamental principle in analyzing these types of cases: "The severity of the impairment measures the height of the hurdle the state legislation must clear. Minimal alteration of contractual obligations may end the inquiry at its first stage." 438 U.S. at 244-45 (footnotes omitted).

In *Spannaus*, the impairment was severe. Of particular importance to the Court, and distinguishing that case from others where the legislation was upheld against the Contract Clause challenges, was the fact that the act was seeking to aid a very narrow group of individuals on a permanent basis — i.e., the impairment did not arise from temporary legislation enacted to remedy broad emergency economic or social conditions. *Id.* at 248-50. *See, e.g., Blaisdell*, 290 U.S. 398 (temporary mortgage moratorium enacted to provide relief for homeowners threatened with foreclosure).

The Fourth Circuit considered a Contract Clause challenge in *Baltimore Teachers Union v. Mayor and City Council of Baltimore*, 6 F.3d 1012, 1015 (4th Cir. 1993), *cert. denied*, 114 S.Ct 1127 (1994). There, the Court held that a city salary reduction plan adopted to meet immediate budgetary shortfalls did not violate the Contract Clause.

In undertaking its analysis, the Court summarized the three-part Contract Clause analysis which has emerged from Supreme Court jurisprudence, as follows:

> As a threshold matter, it must be determined whether there has been impairment of a contract. Second, it must be determined "whether the state law has, in fact, operated as a *substantial* impairment of a contractual relationship." *Spannaus*, 438 U.S. at 244, 98 S.Ct. at 2722 (emphasis added); *see also Bannum, Inc. v. Town of Ashland*, 922 F.2d 197, 202 (4th Cir. 1990) (legislation must constitute "a severe impairment of the [contractual] right"). Finally, assuming there has been a substantial impairment of contract, it must be determined whether that impairment is nonetheless permissible as a legitimate exercise of the state's sovereign powers, and inquiry that differs subtly depending upon whether the contract impaired is a private or, as here, a public one.

Id. at 1015 (citation omitted).

The Court determined that a contract existed and that the impairment had been substantial. *Id.* at 1015-18. In determining that the impairment was substantial, the Court observed the "[t]he Supreme Court . . . has provided little

specific guidance as to what constitutes a 'substantial' contract impairment." *Id.* at 1017. Nonetheless, the Court explained that the Supreme Court has "appeared to assume that an impairment is substantial at least where the right abridged was one that induced the parties to contract in the first place, or where the impaired right was one on which there had been reasonable and especial reliance." *Id.* (citations omitted).[7]

In holding that the impairment was substantial, the Court explained that "[i]n the employment context, there likely is no right both more central to the contract's inducement and on the existence of which the parties more especially rely, than the right to compensation at the contractually specified level." *Id.* Significantly, the Court explained that although the diminution of salary was .95% of an individual employee's annual salary, this still represented a substantial impairment because

> this amount could represent a substantial portion of a monthly mortgage or rental payment, or weeks of food. Indeed, because individuals plan their lives based upon their salaries, we would be reluctant to hold that any decrease in an annual salary beyond one that could fairly be termed *de minimus* could be considered insubstantial.

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[7]Thus, where the "particular rights were necessarily subject to legislative impairment" modification of the contract has withstood constitutional scrutiny. *Id.* at 1018. *See also Energy Reserves*, 45 U.S. 400;*Charleston v. Public Svc. Comm'n of W. Va.*, 57 F.3d 385, 394 (4th Cir.), *cert. denied*, 116 S.Ct. 474 (1995).

Id. n.8 (collecting cases).

Both parties in *Baltimore Teachers Union* agreed that the financial integrity of Baltimore City was a "significant public purpose" to justify action on the part of the city, therefore, the only remaining question for the Court was whether the action taken was reasonable and necessary to achieve this purpose. *Id.* at 1019. As to the degree of deference to be accorded to the City in decisions involving public contracts, the Court explained that "[w]hile complete deference is inappropriate, . . . at least some deference to legislative policy decisions to modify these contracts in the public interest must be accorded." *Id.*; *see also id.* at 1019 n.10 (observing that "[t]he [Supreme] Court has never expressly stated that any deference is owed legislative judgments in the context of public contract impairment. However, the most reasonable inference . . . is that *some* degree of deference is appropriate even where a state acts to impair its own contract." (citations omitted)).

In explaining why it was reversing the district court's opinion striking down the legislation, the Court held:

> It is not enough to reason, as did the district court, that "[t]he City *could have* shifted the burden from another governmental program," or that "it *could have* raised taxes." *Id.* (emphasis added). Were these the proper criteria, no impairment of a governmental contract could ever survive constitutional scrutiny, for these courses are always open, no matter how unwise they may be. Our task is rather to ensure through the "necessity and reasonableness" inquiry that states neither "consider impairing the obligations of [their] own contracts on a par with other policy

> alternatives" or "impose a drastic impairment when an evident and more moderate course would serve its purposes equally well," *United States Trust*, 431 U.S. at 30-31, 97 S.Ct. at 1522, nor act unreasonably "in light of the surrounding circumstances," *id.* at 31, 97 S.Ct at 1522.

Id. at 1019-20 (citation omitted) (alteration in the original).

In upholding the legislation the Court observed that a real emergency existed, that the salary reductions were not the only (nor the first) means by which the City sought to meet its budgetary shortfall, the reduction was limited to meet the anticipated shortfall (and was discontinued when it realized that the shortfall was not as great as it anticipated), the plan was less drastic than other alternatives (e.g., layoffs), the plan dealt with a general societal problem, the plan applied equally to all City employees, as public employees it should not have been unexpected that they would be called upon to make a sacrifice under such circumstances, and the plan was limited in duration.[8] *Id.* at 1020-21.

Finally, the Court explained its role in relation to the local legislature in determining the public policy questions presented by cases like this one as follows:

> The authority of the states to impair contracts, to be sure, must be constrained in some meaningful way. The Contract Clause, however, does not require the courts—even

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[8]In fact, the City's plan was "immediately discontinued . . . at the first opportunity . . . ." 6 F.3d at 1021.

> where public contracts have been impaired—to sit as superlegislatures, determining, for example, whether it would have been more appropriate instead for Baltimore to close its schools for a week, an option actually considered but rejected, or to reduce funding to the arts, as appellees argue should have been done. Not only are we ill-equipped even to consider the evidence that would be relevant to such conflicting policy alternatives; we have no objective standards against which to assess the merit of the multitude of alternatives.

Id. at 1021-22.

Most recently, Judge Motz, writing for the Fourth Circuit in *Charleston v. Public Svc. Comm'n of W. Va.*, 57 F.3d 385 (4th Cir.), *cert. denied*, 116 S. Ct. 474 (1995), explained in detail the analysis required in determining if the contractual impairment alleged is substantial. Judge Motz explained that in determining whether the alleged impairment is substantial, the

> greatest concern appears to be the contracting parties' actual reliance on the abridged contractual term. Specifically, the Supreme Court has examined contracts to determine whether the abridged right is one that was "reasonably relied" on by the complaining party, *Spannaus*, 438 U.S. at 246, 98 S.Ct. at 2723, or one that "substantially induced" that party "to enter into the contract." *City of El Paso v. Simmons*, 379 U.S. 497, 514, 85 S.Ct. 577, 587, 13 L.Ed.2d 446 (1965); *see also United States Trust*, 431 U.S. at 19 n.17, 97 S.Ct. at 1516

> n.17. *See generally Baltimore Teachers Union*, 6 F.3d at 1017-18 and n. 7. When assessing whether there has been the requisite reliance, the Court has looked to objective evidence of reliance.

Id. at 392. Whether there has been "actual reliance" by the party alleging impairment has been determined by a consideration of the following objective factors:

> (1) "[W]hether the contract— either explicitly or implicitly— indicated that the abridged term was subject to impairment by the legislature." *Id.* at 392-93.
>
> (2) Whether the right involved has been subject to regulation in the past. *Id.* At 393. Existence of past pervasive regulation is some indication that the complaining party had no reasonable basis upon which to rely on the provision. *Id.*
>
> (3) The extent of the modification. *Id.* An absolute abolishment of the covenant would more clearly upset a party's legitimate expectations than would a modest modification. *Id.*
>
> (4) Whether the right abridged was essential in nature to the underlying contract. Modifications effecting a "fundamental change" in a "primary consideration" of the parties is more likely to have worked a substantial impairment. *Id.* at 393-94.

The Court held that

> each of these factors indicate that the 1990

> amendment did not constitute a substantial impairment of the bond contracts. The bond contracts themselves contain express acknowledgements that the parties' rights were subject to legislative regulation; there was a long established precedent of extensive state regulation of public utilities; the contracts were not abolished but merely modified; and the abridged right is, by its nature, not one central to the parties' undertaking.

Id. at 394.[9]

V. APPLICATION OF LAW TO THIS CASE

Plaintiffs argue that Bill Nos. 61-94 and 74-95 effect a substantial impairment of their contract rights in violation of the Contract Clause. In particular, the plaintiffs suggest that they relied upon the increase in benefits in making their decision to stay at their positions and in altering their retirement plans in respect to spousal and dependent survivor benefits. The County responds, in the alternative, (1) that there is no enforceable contract, thus there can be no violation, and (2) that the impairment is justified, reasonable and necessary.

A. Existence of a Contract

First, the County contends that there is no enforceable contract because county officials involved in helping to get the

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[9]The Court also relied on the fact that the security provision in question was "'replaced by an arguably comparable security provision.'" 57 F.3d at 394 (quoting *United States Trust*, 431 U.S. at 19).

benefit-enhancing original legislation passed (who were themselves beneficiaries of the changes) supplied the County Council with incorrect information and knowingly concealed other significant information. Thus, as no *private* enforceable contract could be formed under Maryland law under similar circumstances, the County argues that Bill Nos. 56-87 and 36-89 cannot constitute an enforceable "contract."

In determining whether legislation creates a contract for purposes of Contract Clause analysis, the law of the state in which the legislation was enacted is determinative. *Kestler v. Board of Trustees of No. Carolina Gov'tal Employees' Retirement Sys.*, 48 F.3d 800, 803 (4th Cir.) (Citing *Baker v. Baltimore County*, 487 F. Supp. 461, 466-67 (D. Md. 1980), *aff'd*, 660 F.2d 488 (4th Cir. 1981)), *cert. denied*, 116 S. Ct. 186 (1995). In this case, that state is Maryland. It is clear that

> [u]nder Maryland law, pension plans create contractual duties toward persons with vested rights under the plans. *See, e.g., Archer v. Archer*, 303 Md. 347, 357, 493 A.2d 1074 (1985); *Lookingbill v. Lookingbill*, 301 Md. 283, 289, 483 A.2d 1 (1984); *Deering v. Deering*, 292 Md. 115, 124-128, 437 A.2d 883 (1981); *City of Frederick v. Quinn*, 35 Md.App. 626, 371 A.2d 724 (1977).

Board of Trustees of the Employees' Retirement Sys. v. Mayor & City Council of Baltimore City, 317 Md. 72, 99, 562 A.2d 720, 733 (1989), *cert. denied sub nom., Lubman v. Mayor and City Council of Baltimore City*, 493 U.S. 1093 (1990). *See also Davis v. Mayor and Alderman of the City of Annapolis*, 98 Md. App. 707, 715, 635 A.2d 36, 40 (1994).

I conclude that the County's recitation of contract principles which might ordinarily invalidate a contract in

Maryland are inappropriate in the case of a public employee pension plan created by legislative enactment. Regardless of whether in the private contract setting an enforceable contract would have been formed, a statute or ordinance remains a statute or ordinance irrespective of common law contract principles. The County, conceding that its theory is novel, to say the least, has pointed to no authority to the contrary. Thus, the question for the Court is not whether a valid contract was created in terms of a private contractual relationship, but rather, whether a valid legislative enactment exists. Bill Nos. 56-87 and 36-89 are not actually contracts but, rather, they are "treated as a contract" for purposes of Contract Clause analysis. *See United States Trust*, 431 U.S. at 17 n.14. The County's argument that the "Contract Clause does not protect expectations that are based upon contracts that are invalid, illegal, [or] unenforceable," Df.'s Mem. Of Grds and Auth. In Opp. to Pls' Mot. For Part. Summ. J. at 26 ("Df.'s Mem."), is undoubtedly true, but quite beside the point under existing law. The County fails to demonstrate how Bill Nos. 56-87 and 36-89 were invalid, illegal, or constituted void legislation. Thus, I reject the County's novel theory that the pension plan does not constitute an enforceable contract.

B. Substantial Impairment

There is no dispute that the bills in question work an impairment of the plaintiffs' contract rights. Furthermore, there can be little doubt that the impairment is substantial. The reliance which the aggrieved party placed on the contractual obligation appears to be the primary yardstick by which the degree of impairment is determined. *See Baltimore Teachers Union*, 6 F.3d at 1018. In *Baltimore Teachers Union v. Mayor and City Council of Baltimore*, the Fourth Circuit held that "[i]n the employment context, there likely is no right both more central to the contract's inducement and on the existence of

which the parties more especially rely, than the right to compensation at the contractually specified level." *Id.* Although that case dealt with the diminution of an employee's annual salary, its holding is equally applicable here where "individuals plan their lives based upon their [pension benefits] . . . ." *Id.* at 1018 n.8. The diminution of pension benefits is more likely than not an even *more* substantial impairment than a diminution of annual salary because the individual receiving pension benefits is typically already living on a reduced income as compared to her pre-retirement earnings. Thus, a decrease in benefits would potentially have a greater impact.

The County suggests that the impairment would be substantial only if the plaintiffs' "legitimate expectations" for benefits were not met. This is really a restatement of its "no enforceable contract" argument. As support for its position that the plaintiffs did not have "legitimate expectations" to receive the benefits to which they were lawfully entitled at the time of their retirements, the County states that (1) only one of the plaintiffs joined the plan after the 1987 and 1989 changes, and (2) because the benefit-enhancements mandated by the 1987 and 1989 changes exceed the typical benefits under comparable plans, the plaintiffs' expectations were not "legitimate." Df.'s Mem. At 32-33. Neither argument is persuasive.

First, the timing of the plaintiffs' entry into the A & E Plan is immaterial. The fact remains that they were free to leave their positions at will, but each remained on the job for more than a year (as required under law) to "earn" the enhanced benefits. Consequently, the existence of benefits which came into being after they began working was as much an inducement to stay on as it would have been for them to take the positions in the first place. Second, what other individuals in other pension plans might be entitled to receive, comparable or otherwise, is irrelevant to the constitutional issue presented.

The question is what the plaintiffs expected to receive under their plan, not whether they would have been entitled to those benefits if they had worked somewhere else, or had come to work for the County at a later time.[10]

C. Reasonableness and Necessity

Even a substantial "impairment may be constitutional if it is reasonable and necessary to serve an important public purpose." *United States Trust*, 431 U.S. at 25-26. The County suggests that its "important public purpose" in enacting Bill Nos. 61-94 and 74-95

> was not [to] remedy[] an acute financial crisis faced by the Anne Arundel County government, but instead was the restoration of the actuarial soundness of the A&E Plan and the elimination of pension benefits which were the product of self-dealing, deception, and outright misrepresentation of the costs. Clearly, it is inconsistent with the sovereign power of the State, as exercised by one of its political subdivisions, to be rendered helpless to undo such a wrong.

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[10]Perhaps under some imaginable circumstances, the benefits promised could have been so outlandish that no reasonable person could have expected to have received them. Nonetheless, although the A & E Plan as amended was extraordinarily generous, essentially treating desk-bound (cont'd) bureaucrats like law enforcement officers and firefighters, I do not believe that the level of benefits involved in this case approaches the "outlandish."

Df.'s Mem. at 34.

Although I have no doubt that maintaining the "actuarial soundness" of the A & E Plan is an important purpose, *see, e.g., Maryland State Teachers Assoc., Inc. v. Hughes*, 594 F. Supp. 1353, 1364-68 (D. Md. 1984), the County has failed to make a sufficient showing that the means which it has adopted to address its "problem" is the least drastic available.[11] *United States Trust*, 431 U.S. at 31. Nor has there been a showing that the conditions imposed by Bill Nos. 61-94 and 74-95 are reasonable or narrowly tailored to achieve the purpose at hand. *Energy Reserves Grp., Inc.*, 459 U.S. at 410 n.11; *Spannaus*, 438 U.S. at 242 (citing *Blaisdell*, 290 U.S. at 444-447). Furthermore, it has been held that, in Maryland, "under certain circumstances the government may unilaterally modify [pension benefits] so long as the changes do not adversely alter the benefits, or if the benefits are adversely altered, they are replaced with comparable benefits." *Davis*, 98 Md. App. at 715. *See also Hughes*, 594 F. Supp. at 1363. *Cf. Charleston*, 57 F.3d at 394 (altered security provision was "'replaced by an arguably comparable security provision'") (quoting *United States Trust*, 431 U.S. at 19). There has been no showing that the benefits which the County took away have been replaced with comparable benefits.[12]

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[11]In fact, the plaintiffs suggest several alternative remedies to the County's conundrum, *see* Pls' Mem or Points and Auth. In Supp. of Verified Mot. for Ex Parte and . . . . cont'd. . . Interlocutory Inj. at 44-47, none of which the County addresses.

[12]As I expressed at the hearing, moreover, if punishment of official misconduct is the County's aim, criminal and civil remedies remain available for invocation

Moreover, the County readily acknowledges that this is not an emergency situation. Although an emergency is not necessary to justify an impairment, *Baltimore Teachers Union*, 6 F.3d at 1020 n.11, courts have typically upheld such extreme modifications only in the face of emergency or temporary situations. *See Spannaus*, 438 U.S. at 248-50; *Blaisdell*, 290 U.S. 398; *Baltimore Teachers Union*, 6 F.3d at 1020-21.

VI. SUMMARY OF CONTRACT CLAUSE ANALYSIS

Although the argument could be made that the County Council did pursue other means of achieving its goal as well, i.e., through its earlier prospective legislation, when faced with as substantial an impairment as proposed here, I cannot conclude that it has gone far enough to pursue other alternatives or to demonstrate that those alternatives were not as worthwhile or feasible. "The severity of the impairment measures the height of the hurdle the state legislation must clear." *Spannaus*, 438 U.S. at 244-45. Here, I am persuaded that the hurdle is very high. Accordingly, I conclude as a matter of law that the Contract Clause has been violated, and I shall grant the plaintiffs' motion for partial summary judgment.

VII. THE SECTION 1983 CLAIM

In addition to the assertion of the Contract Clause claim (essentially under 28 U.S.C. § 1331 for purposes of the Court's removal jurisdiction), plaintiffs have sought to assert a claim under 42 U.S. C. § 1983, admittedly, in commendable candor, solely to provide a basis for seeking their attorneys' fees and

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against identified malefactors.

costs under 42 U.S.C. § 1988.[13] I decline, however, for the reasons stated at the hearing, and despite the cogency of plaintiffs' arguments to the contrary, to rule on the basis of a forecast that the Supreme Court will at its first opportunity expressly overrule *Carter v. Greenhow*, 114 U.S. 317, 322, 29 L.Ed. 202, 204 (1885) (no § 1983 claim lies for a Contract Clause violation).[14] Accordingly, judgment shall be entered in

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[13]Although the complaint is unartfully pled as asserting a claim "for violation of" § 1983, plaintiffs have clarified that they intended to assert a claim *under and pursuant to* § 1983 for the underlying Contract Clause violation. Still, plaintiffs have not clarified whether their claims for damages, as contrasted with their claims for declaratory and injunctive relief, are intended to be asserted under § 1983 or under state law. Although the damage issues may be adjudicated upon the remand of this case to state court, *see* text *infra* and n.14, for the reasons set forth in this section of this opinion, plaintiffs may not seek damages under § 1983.

[14]In *Carter*, the Supreme Court determined that, in fact, only one remedy was available under the Contract Clause:

> That constitutional provision, so far as it can be said to confer upon or secure to any person any individual rights, does so only indirectly and incidentally. It forbids the passage by the states of laws such as are described. If any such are, nevertheless, passed by the legislatures of a state, they are unconstitutional and void. In any judicial proceeding necessary to vindicate his rights under a contract affected

favor of the County on this issue.

VIII. REMAND

In light of my early and final determination of each of the asserted federal claims in this case, the only remaining

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> by such legislation, the individual has a right to have a judicial determination declaring the nullity of the attempt to impair its obligation. The is the *only right* secured to him by that clause of the constitution.

114 U.S. at 322 (emphasis added). *See also Ex parte Ayers*, 123 U.S. 443, 504 (1887) (quoting *Carter* with approval).

Damages are available, however, for a breach of contract. "The Supreme Court in the context of the contract clause has drawn a distinction between a breach of a contract and impairment of the obligation of the contract." *E & E Hauling, Inc. v. Forest Preserve Dist. Of Du Page County, Illinois*, 613 F.2d 675, 679 (7th Cir. 1980) (citing *Hays v. Port of Seattle*, 251 U.S. 233, 237 (1920)). Thus, in the instant cont'd. . . . case, if the County were now unwilling to pay the plaintiffs their pension benefits according to the terms of Bill Nos. 56-87 and 36-89, the plaintiffs would have a state law cause of action for damages for breach of contract. *Id.* at 680. *See also Horowitz-Matthews, Inc. v. City of Chicago*, 78 F.3d 1248 (7th Cir. 1996) (Posner, C.J.) (explaining the difference between legislation which "leaves the promisee with a remedy in damages for breach of contract and one that extinguishes the remedy"; only the latter involves the Contract Clause); *Jackson Sawmill Co. v. United States*, 580 F.2d 302, 311-12 (8th Cir. 1978) (same).

claims are state law claims. Remand of removed cases under such circumstances is the general rule. *Shanaghan v. Cahill*, 58 F.3d 106, 110 (4th Cir. 1995); *see also Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 351 (1988) ("[The Court's opinion in *United Mineworkers v. Gibbs*, 383 U.S. 715 (1966),] strongly supports the conclusion that when a district court may relinquish jurisdiction over a removed case involving pendent state claims, the court has discretion to remand the case to state court."); 28 U.S.C. § 1367(c)(3). "[T]rial courts enjoy wide latitude in determining whether or not to retain jurisdiction over state claims when all federal claims have been extinguished." *Shanaghan*, 58 F.3d at 110. Moreover, "[t]here are *no* situations wherein a federal court *must* retain jurisdiction over a state law claim, which would not by itself support jurisdiction." *Id.*

In determining whether to retain or to remand the instant case to state court, thIS Court must consider a variety of equitable factors, including: "convenience and fairness to the parties, the existence of any underlying issues of federal policy, comity, and considerations of judicial economy." *Id. See also Carnegie-Mellon,* 484 U.S. at 350 & n.7; *In re Conklin*, 946 F.2d 306, 322 (4th Cir. 1991). Moreover, this Court should consider the "amount of time and energy that has already been expended, and decide whether it might be more efficient to simply retain jurisdiction." *Shanaghan*, 58 F.3d at 112. See also *Washington v. Union Carbide*, 870 F.2d 957, 962 (4th Cir. 1989).

In weighing these various factors, this Court finds that remand is the proper course of action. First, very little, if any, additional legal research will be required of the parties. Second, any additional factual development which the parties must now engage in would have had to have been performed regardless of the forum. Thus it does not appear that remanding this case to

the Circuit Court for Anne Arundel County, Maryland, would be unduly inconvenient or unfair. *See Parker & Parsely Petro. Co. v. Dresser Ind.*, 972 F.2d 580, 587-88 (5th Cir. 1992). In addition, judicial economy will be served by remand to the state court, because the issues in this case

> have been developed and narrowed in federal court, and, as a result, they will be in a posture to be readily resolved in state court . . . . [J]udicial economy would not be served by allowing . . . [the] state claims [to be retained by the] federal court on the strength of [finally resolved] federal claim[s].

McCullough v. Branch Banking & Trust Co., 844 F. Supp. 258, 262 (E.D.N.C. 1993), *aff'd*, 35 F.3d 127 (4th Cir. 1994), *cert. denied*, 1115 S.Ct. 1101 (1995).

At the hearing in this case, it was disclosed that the eleventh hour removal of this case was reluctantly effected by the County for reasons which probably now no longer obtain. Furthermore, the proposed amended complaint seeks to assert a novel state constitutional claim better suited for resolution in state court. *See Green v. Zendrian*, 916 F. Supp. 493 (D. Md. 1996) (declining to exercise supplemental jurisdiction over claim under Maryland Constitution). Moreover, the plaintiff seeking to join the action in the amended complaint relies on state law issues intimately related to his divorce, which was granted by the Circuit Court for Anne Arundel County, the very court to which this case shall be remanded. All of these factors militate strongly in favor of remand.

Accordingly, this case shall be remanded to the Circuit Court for Anne Arundel County, Maryland, for resolution of all

remaining issues.[15]

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[15]I note, however, that should neither party choose to appeal my order to the United States Court of Appeals for the Fourth Circuit, a remand gives the County a second bite at the apple, because the circuit court will not be bound by my analysis. The Maryland Court of Appeals recently explained in *Gertz v. Anne Arundel County*:

> Maryland Rule 2-602(a) makes clear that an order that does not adjudicate all of the claims in an action, or that adjudicates less than an entire claim, or that adjudicates the liabilities of fewer than all the parties to the action is not a final judgment and may be revised at any time before the entry of a final judgment. See *Rohrbeck v. Rohrbeck*, 318 Md. 28, 44, 566 A.2d 767, 775 (1989) (until there is a final judgment, under Maryland Rule 2-602, all prior rulings remain interlocutory and subject to revision). We have held, moreover, that "as a general principle, one judge of a trial court ruling on a matter is not bound by the prior ruling in the same case by another judge of the court; the second judge, in his discretion, may ordinarily consider the matter do novo." *State v. Frazier*, 298 Md. 422, 449, 470 A.2d 1269, 1283 (1984).

339 Md. 261, 272-273, 661 A.2d 1157, 1163, *cert. denied*, 116 S.Ct. 522 (1995). *See also State v. Stewart*, 319 Md. 81, 91, 570 A.2d 1229, 1233 (1990) ("[N]o trial judge is required to abdicate his own individual judgment merely because a colleague of coordinate jurisdiction has a made a ruling.").

/s/ Andre M. Davis
Andre M. Davis
United States District Judge

Filed: May 31, 1996

Cf. Resolution Trust Corp. v. Allen, 16 F.3d 568, 573 (4th Cir. 1994) ("[A]fter removal [of a case from state court to federal district court,] the district court would adopt the state court judgment as its own . . . . [T]hen the parties would follow the ordinary rules regarding post-judgment remedies. They may file motions pursuant to the applicable Rules of Civil Procedure, or file a timely notice of appeal to the federal appeals court.").

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Civil No. AMD 96-173

PARKER ANDREWS, et al.,

v.

ANNE ARUNDEL COUNTY, MARYLAND

JUDGEMENT ORDER

For the reasons set forth in the foregoing **Memorandum Opinion**, it is this 31st day of May 1996, by the United States District Court for the District of Maryland ORDERED, DECREED AND ADJUDGED:

(1) The plaintiffs' motion for partial summary judgment BE, and IT HEREBY IS, GRANTED;

(2) Anne Arundel County Bill No. 74-95, as applied to the plaintiffs in this action, is violative of the Constitution of the United States, Article I, § 10, cl. 1, in that it works an impermissible impairment of plaintiffs' contractual entitlement to pension benefits, and same shall not be applied or enforced against plaintiffs to this action;

(3) The defendant's motion for judgment on the pleadings, as to any claim under 42 U.S.C. § 1983, BE, and IT HEREBY IS, GRANTED, and JUDGMENT IS HEREBY

ENTERED AS TO ANY SUCH CLAIM IN FAVOR OF DEFENDANT, without prejudice to any other claim or right now or hereafter asserted by plaintiffs for money damages or otherwise;

(4) All remaining claims in this case, now or hereafter asserted, BE, and THEY HEREBY ARE, REMANDED TO THE CIRCUIT COURT FOR ANNE ARUNDEL COUNTY;

(5) The Clerk shall CLOSE this case;

(6) The Clerk shall mail copies of this **Judgment Order** and the foregoing **Memorandum Opinion** to counsel of record.

/s/ Andre M. Davis
Andre M. Davis
United States District Judge

Filed: May 31, 1996

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

Civil No. AMD-96-173

PARKER ANDREWS, et al.

v.

ANNE ARUNDEL COUNTY, MARYLAND

ORDER

The Plaintiffs' Motion to Alter or Amend and the opposition thereto having been read and considered, it is this 26th day of August, 1996, by the United States District Court for the District of Maryland ORDERED:

(1) That the plaintiffs' motion BE, and IT HEREBY IS, DENIED;

(2) That the CLERK MAIL copies of this order to all counsel of record.

/s/ Andre M. Davis
Andre M. Davis
United States District Judge

Filed: August 26, 1996

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND

Civil No. AMD-96-173

PARKER ANDREWS, et al.

v.

ANNE ARUNDEL COUNTY, MARYLAND

ORDER

At the time I issued the Scheduling Order in the instant case in late January 1996, I was unaware of the extent to which the state proceedings had advanced prior to the eleventh hour removal of the case to this County, or that a motion for partial summary judgment had been filed in state court. There is indeed good reason, as argued by plaintiffs, to consider fully the pending motion for partial summary judgment prior to any discovery in this case. Accordingly, it is this 29th day of March 1996, by the United States District Court for the District of Maryland, ORDERED

(1) That the Scheduling Order issued by this Court on January 29, 1996, BE, and hereby IS, VACATED; and it is further ORDERED

(2) That a hearing on all outstanding motions shall be held on Friday April 26, at 2:00 p.m.

The Clerk of the Court shall serve copies of the Order, by United States Mail, upon the attorneys of record for the parties.

/s/ Andre M. Davis
Andre M. Davis
United States District Judge

Filed: March 29, 1996

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 96-2463
CA-96-173-AMD

PARKER ANDREWS; JOSEPH N. BURROWS; LINDA G. FINNELLE; MICHAEL F. GILLIGAN; LEROY JONAS, JR.; RICHARD F. MAYER; JOSEPH J. MCCANN; VERONICA MIXTER; JOSEPH H. NOVOTNY; EMOGENE N. PRICE; DENISE RANKIN; ADRIAN G. TEEL; FRANCIS J. ZYLWITIS,

Plaintiffs-Appellees,

v.

ANNE ARUNDEL COUNTY, MARYLAND,

Defendant-Appellant.

No. 96-2465
CA-96-173-AMD

PARKER ANDREWS; JOSEPH N. BURROWS; LINDA G. FINNELLE; MICHAEL F. GILLIGAN; LEROY JONAS, JR.; RICHARD F. MAYER; JOSEPH J. MCCANN; VERONICA MIXTER; JOSEPH H. NOVOTNY; EMOGENE N. PRICE; DENISE RANKIN; ADRIAN G. TEEL; FRANCIS J. ZYLWITIS

Plaintiffs-Appellants,

v.

ANNE ARUNDEL COUNTY, MARYLAND,

Defendant-Appellee.

ORDER

Appellees/ cross-appellants have filed a petition for rehearing. The Court denies the petition for rehearing.

For the Court,

/s/ Patricia S. Connor
CLERK

Filed: July 9, 1997

APPENDIX D

UNITED STATES CODE
TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE
PART IV— JURISDICTION AND VENUE
CHAPTER 85— DISTRICT COURTS; JURISDICTION

§ 1331. Federal question

The district courts shall have original jursdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

UNITED STATES CODE
TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE
PART IV— JURISDICTION AND VENUE
CHAPTER 85— DISTRICT COURTS; JURISDICTION

§ 1343. Civil Rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;

(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

(b) For purposes of this section—

(1) the District of Columbia shall be considered a State; and

(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

UNITED STATES CODE
TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE
PART IV— JURISDICTION AND VENUE
CHAPTER 89— DISTRICT COURTS; REMOVAL OF CASES FROM STATE COURTS

§ 1441. Actions removable generally

(a) Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.

(b) Any civil action of which the district courts have original jurisdiction founded on a claim or right arising under the Constitution, treaties or laws of the United States shall be removable without regard to the citizenship or residence of the parties. Any other such action shall be removable only if none of the parties in interest properly joined and served as defendants is a citizen of the State in which such action brought.

(c) Whenever a separate and independent claim or cause of action within the jurisdiction conferred by section 1331 of this title is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters in which State law predominates.

(d) Any civil action brought in a State court against a foreign

state as defined in section 1603(a) of this title may be removed by the foreign state to the district court of the United States for the district and division embracing the place where such action is pending. Upon removal the action shall be tried by the court without jury. Where removal is based upon this subsection, the time limitations of section 1446(b) of this chapter may be enlarged at any time for cause shown.

(e) The court to which such civil action is removed is not precluded from hearing and determining any claim in such civil action because the State court from which such civil action is removed did not have jurisdiction over that claim.

UNITED STATES CODE
TITLE 42. THE PUBLIC HEALTH AND WELFARE
CHAPTER 21— CIVIL RIGHTS
SUBCHAPTER I— GENERALLY

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

APPENDIX E

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 1995, Legislative Day No. 37

Bill No. 74-95

Introduced by Mrs. Evans, Chairman
(By request of the County Executive)

Introduced and first read on September 18, 1995
Public Hearing set for and held on October 16, 1995
Public Hearing on AMENDED BILL set for and held on November 6, 1995.

By Order: Judy C. Holmes, Administrative Officer

A BILL ENTITLED

AN ORDINANCE concerning: Retirement Plan for Appointed and Elected Officials

FOR the purpose of altering the normal retirement age under the Retirement Plan for Appointed and Elected Officials; deleting obsolete references to early retirement; altering the formula by

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EXPLANATION: CAPITALS indicate new matter added to existing law.
[Brackets] indicate matter stricken from existing law.
Underlining indicates amendments to bill.
~~Strikeover~~ indicates matter stricken from

bill by amendment.
which pension benefits are determined; providing for the retroactive application of this Ordinance; providing for the effect of this Ordinance on disability pensions, contingent annuitant option, and death benefits; providing for the repeal of laws inconsistent with this Ordinance; and making provisions of this Ordinance severable.

BY repealing and reenacting, with amendments: Article 7, §§3-101(i), 3-107, 3-206(b)(2), 3-207, and 3-210(g)(1)(i) Anne Arundel County Code (1985, as amended)

BY repealing and reenacting, with amendments: Article 7, §§3-206(a) and (c); 3-209; 3-210(b), (c), (d), and (f); 3-213; 3-214(b); 3-215; and 3-216(a)
Anne Arundel County Code (1985, as amended)

WHEREAS, the Retirement Plan for Appointed and Elected Officials is underfunded and remains financially unsound in violation of the intent of Section 814 of the Charter of Anne Arundel County; and

WHEREAS, the amendments and enhancements to the Retirement Plan for Appointed and Elected Officials enacted during the period 1982-1989, particularly those enacted by Bill No. 36-89, resulted in the underfunding of the Plan and in a pension program which conferred unwarranted, excessive benefits on a select group of participants beyond those which reasonably could have been expected in return for service in the County government; and

WHEREAS, these amendments and enhancements to the Retirement Plan for Appointed and Elected Officials were drafted and adopted by the same appointed and elected officials who were unjustly enriched by the unwarranted, excessive

benefits, amounting to conduct which constituted a violation of the public trust reposed in those officials; and

WHEREAS, because of the limitations on the increase in revenues imposed by Section 710(d) of the Charter of Anne Arundel County, the substantial, additional appropriations which would be necessary to adequately fund the Retirement Plan for Appointed and Elected Officals under its current provisions necessarily would result in a reduction of important services and expenditures for the public benefit, and that the diminution of benefits now being paid under the Retirement Plan for Appointed and Elected Officials is justified by countervailing equities for the public's welfare; now, therefore,

SECTION 1. *Be it enacted by the County Council of Anne Arundel County, Maryland,*
That Section(s) of the Anne Arundel County Code (1985, as amended) read as follows:

ARTICE 7 PENSION PLANS
Title 3. Retirement Plan for Appointed and Elected Officials

3-101. Definitions.

(i) [(1)] "Normal retirement date" means[, for participants appointed or elected on or before June 30, 1993,] the first day of the month after the earlier of a participant's 60th birthday or the date as of which a participant completes 16 years of service.

[(2) "Normal retirement date" means, for participants appointed or elected on or after July 1, 1993, the first day of the monthy after the employee:

(i) reaches the employee's 60th birthday; or

(ii) reaches the employee's 55th birthday and completes at least 30 years of service.]

3-107. Determination of actuarial equivalent.

(a) Except as provided in subsection [(c)] (B) of this section, the option factors on which the actuarial equivalent is based are 88.33% male, 16.67% female weighing of the annuity values derived from the 1971 group annuity mortality table assuming six percent interest.

[(b) Except as provided in subsection (c) of this section, the early retirement adjustment factors on which the actuarial equivalent is based are a normal retirement age of 60, reduced 0.5% for each month for the first 60 months, 0.3% for each month for the next 60 months, and 0.2% for each month date of this plan for the next 10 years.]

[(c)] (B) With respect to each participant whose retirement date occurs after August 1, 1983, the appropriate adjustment factors are the applicable gender-neutral option factors and early retirement adjustment factors, but the retirement income payable to a participant on the participant's retirement date, as adjusted by the applicable adjustment factors, as in effect after August 1, 1983, may not be less than the amount of retirement income the participant had accrued on August 1, 1983, as adjusted by the applicable adjustment factors as in effect in accordance with the terms of the plan as constituted on August 1, 1983.

3-206. Termination of service before retirement.

(a) If an employee's service with the County terminates or the employee ceases to be classified as an employee under this title before the employee's retirement date and after the employee

has completed at least five years of credited service, the employee may elect to:

(1) be paid the employee participant's contributions with credited interest, thus ceasing to be a participant; or

(2) receive a retirement pension, beginning on the first day of the month after the employee's 60th birthday.

(b) The retirement pension provided for IN subsection (a)(2) of this section shall be provided in the following manner:

(1) the participant shall leave the participant's contributions in the pension fund; and

(2) the participant is entitled to receive a retirement pension in an amount equal to the participant's accrued normal pension computed in accordance with §3-207(a) [or (b)] of this article on the basis of the participant's credited service as of the date of the participant's termination, but the amount so determined may not be less than the accrued normal pension attributable to the participant's contributions together with credited interest on the contributions.

(c) If an employee's service with the County terminates or the employee ceases to be classified as an employee under this title before the employee's retirement date and before the employee has completed five years of credited service, the employee may elect to:

(1) be paid the employee participant's contributions with credited interest, thus ceasing to be a participant; or

(2) receive a retirement pension, beginning on the first day of the month after the employee's 60th birthday in an

amount equal to the amount of accrued normal pension attributable to the employee participant's contribution, together with credited interest thereon.

3-207. Normal retirement.

[(a) Each appointed official who retires on or after the normal retirement date who has been credited with five years of service is entitled to receive, commencing on the first day of the month coinciding with or next following the date of retirement, an annual pension equal to 2% of the final earnings for each year of credited service which is not in excess of 10 years, plus an additional 2 1/2% of final earnings for each year of credited service after 10 years; but the maximum pension may not exceed 70% of final earnings.]

[(b)] (A) Each [elected official] PARTICIPANT who retires on or after the normal retirement date who has been credited with five years of service is entitled to receive, commencing on the first day of the month coinciding with or next following the date of retirement, an annual pension equal to 2% of final earnings for each year of credited service not exceeding 70% of final earnings.

[(c)] (B) Each employee who is not receiving or is not eligible to receive a pension benefit under the Maryland State Retirement System, or a plan established in Title 2, 4, 5, or 6 of this article, as of the date of eligibility for pension under this title, and who has completed at least five years of credited service on or before July 30, 1973, is eligible to receive an annual pension of ~~$4,800~~ $1,200 beginning on the later of the following:

(1) July 1, 1989; or

(2) the first day of the month after the employee's 60th birthday.

3-209. Contingent annuitant option.

(a) In lieu of having a pension payable under the normal annuity form, a participant may elect to receive pension benefits of actuarially equivalent value under the contingent annuitant option by filing written notice with the Personnel Officer prior to the participant's normal retirement date. If the election of optional form is in effect on the participant's normal retirement date, the participant shall receive a reduced amount of pension benefit during the participant's lifetime. After death, a pension benefit shall be continued and paid for life to the remaining spouse or other named contingent annuitant, if surviving, in the same reduced amount as specified in the election. If the participant or the participant's contingent annuitant dies, the election of the contingent annuitant option is subject to the following:

(1) if the participant or contingent annuitant dies before the participant's normal retirement date, the option shall be void; or

(2) if the contingent annuitant dies on or after the participant's normal retirement date, but before the date the participant actually retires, the pension payable to the participant upon actual retirement shall be in the same amount as it would have been if the contingent annuitant option had not been elected.

(b) The election of the contingent annuitant option shall be made on a form required by the Personnel Officer and shall be submitted before the effective date off retirement.

3-210. Disability pension.

(b) An employee who is not eligible to retire on a normal retirement pension may be retired by the Personnel Officer on a non-service-connected disability retirement pension beginning on the first day of the month coinciding with or next following the day the following conditions are met:

(1) the participant was making participant's contributions under this title immediately prior to the participant's date of disability;

(2) the participant has five years of service;

(3) the participant is not eligible for service-connected disability retirement; and

(4) the participant is eligible for disability benefits under the Social Security Act as constituted on the date the participant becomes eligible for disability payments under this title, and on the basis of a medical examination by one or more physicians selected by the Personnel Officer, the Personnel Officer finds that the participant is wholly and permanently prevented from:

(i) engaging in any occupation or employment for remuneration or profit not as a result of bodily injury in the performance of duty or occupational disease incurred in the performance of duty; or

(ii) continuing in the capacity of an employee not as a result of bodily injury in the performance of duty or occupational disease incurred in the performance of duty.

(c) An employee who is not eligible to retire on a normal

retirement pension may be retired by the Personnel Officer on a service-connected disability retirement pension beginning on the first day of the month coinciding with or next following the date the following conditions are met:

(1) the Personnel Officer determines on the basis of a medical examination by one or more physicians selected by the Personnel Officer that:

(i) the participant has a total and permanent disability as the natural and proximate result of bodily injury in the performance of the participant's regular occupation at some definite time or place without willful negligence on the participant's part; and

(ii) is unable to engage in the participant's regular occupation as an employee or to be employed by the County in some other position for which the participant is suited by, or which is appropriate to, the participant's training and experience;

(2) the participant was making participant's contributions under this title immediately prior to the participant's date of disability;

(3) the participant is not eligible for non-service connected disability retirement; and

(4) the disability is the result of injury compensable under the State Workmen's Compensation Law and a claim is filed with the State Workmen's Compensation Commission.

(d) A participant ceases to qualify for a non-service connected disability pension when the participant is no longer eligible for disability benefits under the provisions of the Social Security

Act. This subsection does not apply to a participant once the participant has attained normal retirement date.

(f) Disability pension benefits payable to a participant automatically cease when the participant reaches 60 years of age. At that time the participant is entitled to receive a normal retirement pension under this title. The amount of the normal retirement pension shall be determined in accordance with subsection (g) of this section.

(g) The annual amount of disability pension payable to each eligible participant is:

(1) if the participant is deemed to be totally and permanently disabled under subsection (b) of this section, the greater of:

(i) the annual amount of the participant's accrued normal retirement pension as of the participant's date of disability computed in accordance with §3-207(a) [or (b)] of this subtitle; or

(ii) 25% of the participant's final earnings; or

(2) if the participant is deemed to be totally and permanently disabled under subsection (c) of this section, the annual amount of the participant's disability is equal to 66 2/3 of the participant's final earining.

3-213. Death benefits— Before retirement.

(a) Death benefits shall be paid in accordance with §3-214 or §3-215, as applicable, if a participant's death occurs:

(1) before the participant's date of retirement; or

(2) before the participant's normal retirement date if a participant was determined to be totally and permanently disabled as a result of an occupational cause, in accordance with §3-210 of this title.

(b) On the death of a participant who does not meet the conditions of §3-214 or §3-215 of this title before the date of retirement, or the normal retirement date in the case of a participant who is receiving disability benefits under this title, there shall be refunded to the participant beneficiary or estate an amount equal to:

(1) the participant's contributions together with credited interest ot the participant's date of death; and

(2) 50% of the participant's final earnings, provided that the participant has one year or more of credited service.

3-214. Same— Surviving spouse.

(b) The annual benefit payable to the spuse is the greater of:

(1) $120; or

(2) 50% of the participant's accrued normal retirement pension.

3-215. Same— Surviving spouse.

(a) If the participant is survived by one or more unmarried children under the age of 18 years, death benefits shall be paid to the children commencing with the first day of the month following the participant's death. Death benefit payments shall be payable to the participant's unmarried children as a group, with each child becoming ineligible to receive payments on

attaining the age of 18 years or on marriage, whichever first occurs. When all of the participant's unmarried children attain the age of 18 years, no further benefits are payable.

(b) The total annual benefit payable in the aggregate to all such children under this section is equal to 50% of the participant's accrued normal retirement pension, but not less than $120.

3-216. Death benefits— After retirement.

(a) Benefits shall be paid in accordance with subsection (b) of this section:

(1) on the death of a participant after the participant's retirement date;

(2) on the death of a participant after the participant's normal retirement date if the participant has been determined to be totally and permanently disabled in accordance with §3-210 of this title; and

(3) on the death of the participant and the participant's contingent annuitant.

SECTION 2. *And be it further enacted*, That the provisions of this Ordinance shall apply prospectively to all participants who retire on or after the effective date of this Ordinance, and also shall apply retroactively, without limitation, to all individuals who have retired before the effective date of this Ordinance, in the following manner:

1. Any individual who on the effective date of this Ordinance has not yet attained a "normal retirement date" as that term is defined under Article 7, §3-101(i) as enacted by this Ordinance, because the individual has netiher reached the first

day of the month after the individual's 60th birthday, nor completed 16 years of service, shall cease to be entitled to receive a pension under Article 7, §3-206 or §3-207 as enacted by this Ordinance, until the individual attains the individual's normal retirement date; it being the intent of the County Council that no individual shall receive or continue to receive a pension under the Retirement Plan for Appointed and Elected Officials other than a disability pension until that individual has attained the age of 60 years or completed 16 years of service; and

2. On and after January 1, 1996, each individual then retired, or who subsequently retires, shall receive an annual pension in the amount provided under Article 7, §3-207 as enacted by this Ordinance, notwithstanding the amount of any annual pension received by a retired individual prior to January 1, 1996 under any other provision of law; it being the intent of the County Council to reduce, on and after January 1, 1996, the benefits of individuals then retired to 2% of final earnings for each year of credited service, subject to the minimum pension benefit under Article 7, §3-207(b) as enacted by this Ordinance.

SECTION 3. *And be it further enacted*, That the modifications enacted by this Ordinance to the Retirement Plan for Appointed and Elected Officials shall apply to all participants who retire on or after the effective date of this Ordinance, and shall apply retroactively to all individuals who have retired before the effective date of this Ordinance, for purposes of determining the "accrued normal pension" of an individual under Article 7, §3-206(b), and for purposes of determining the "normal retirement date" and calculating the "normal retirement pension" of an individual under the contingent annuitant option, disability pension, and death benefits provided by Article 7, §§3-209, 3-210, 3-213, 3-214, 3-215 and 3-216, except that nothing in this Ordinance shall be

construed to affect or diminish a disability pension payable to a participant whose date of disability as determined under Article 7, §3-210 occurs prior to the effective date of this Ordinance, or to affect or diminish benefits payable to a contingent annuitant under Article 7, §3-209 or to a beneficiary under Article 7, §3-214, §3-215, or §3-216 because of the death of a participant or retired individual prior to the effective date of this Ordinance.

SECTION 4. *And be it further enacted*, That nothing in this Ordinance shall create a forfeiture of pension benefits already paid to retired individuals under prior provisions of law.

SECTION 5. *And be it further enacted*, That all laws inconsistent with this Ordinance are repealed to the extent of the inconsistency.

SECTION 6. *And be it further enacted*, That if any provision of this Ordinance or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jurisdiction, the invalidity does not affect other provisions or any other application of this Ordinance which can be given effect without the invalid provision or application, and for this purpose the provisions of this Ordinance are declared severable.

SECTION 7. *And be it further enacted*, That this Ordinance shall take effect 45 days from the date it becomes law.

AMENDMENT ADOPTED October 16, 1995.
Bill No. 74-95

READ AND PASSED, as amended, this 6th day of November, 1995

By Order:

/s/ Judy C. Holmes
Judy C. Holmes
Administrative Officer

PRESENTED to the County Executive for his approval this 7th day of November, 1995

/s/ Judy C. Holmes
Judy C. Holmes
Administrative Officer

APPROVED AND ENACTED this 15th day of November, 1995

/s/ John Gary
John Gary
County Executive

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 1994, Legislative Day No. 19

Bill No. 61-94

Introduced by Mrs. Evans and Mr. Boschert

By the County Council, May 16, 1994

Introduced and first read on May 16, 1994
Public Hearing set for and held on June 20, 1994
Public Hearing on AMENDED BILL set for and held on July 18, 1994

By Order: Judy C. Holmes, Administrative Officer

A BILL ENTITLED

AN ORDINANCE concerning: Retirement Plan for Appointed and Elected Officials

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EXPLANATION:
CAPITALS indicate new matter added to existing law.
[Brackets] indicate matter stricken from existing law.
Underlining indicates amendments to bill.
~~Strikeover~~ indicates matter stricken from bill by amendment.

FOR the purpose of modifying the provisions for death benefits and contingent annuitants in the Retirement Plan for Appointed and Elected Officials; providing for the applicability of the provisions of the Ordinance; and generally relating to the Retirement Plan for Appointed and Elected Official

BY repealing: Article 7, §§3-209 and 3-213
Anne Arundel county Code (1985, as amended)

BY adding: Article 7, §§3-209, 3-213, 3-214, 3-215, and 3-216
Anne Arundel County Code (1985, as amended)

WHEREAS, it is the finding of the County Council based on the testimony before it on this Bill and on Bills No. 48-93 and 90-93, including the Actuarial and Administrative Audit for Anne Arundel County prepared by the firm of W F Corroon and dated January 15, 1993, that the Retirement Plan for Appointed and Elected Officials is underfunded andfinancially unsound in violation of Section 814 of the Charter of Anne Arundel County, and that certain amendments to the Plan effected by Bill No. 56-87 which greatly expanded the death benefits payable to surviving spouses and children at no additional cost to the participants contributed substantially to this financial unsoundness in ways that were unforeseen and unintended; and

WHEREAS, it is the further finding of the County Council that certain amendments and enhancements to the Retirement Plan for Appointed and Elected Officials enacted during the period 1987-1989, including Bill No. 56-87, resulted in a pension system which conferred unwarranted, excessive benefits on a select group of participants beyond those which reasonably could have been expected in return for service in the County government; and

WHEREAS, because of the limitation on the increase in

revenues imposed by Section 710(d) of the Charter of Anne Arundel County, the substantial, additional appropriations which would be necessary to adequately fund the Retirement Plan for Appointed and Elected Officials under its current provisions necessarily would result in a reduction of important services and expenditures for the public benefit, and the public welfare therefore requires a curtailment of these unwarranted, excessive pension benefits; now, therefore,

SECTION 1. *And be it further enacted*, That Article 7, §§3-209 and 3-213 of the Anne Arundel County Code (1985, as amended) be and they are hereby repealed.

SECTION 2. *And be it further enacted*, That Section(s) of the Anne Arundel County Code (1985, as amended) read as follows:

ARTICLE 7 PENSIONS

Title 3. Retirement Plan for Appointed and Elected Officials

3-209. Contingent annuitant option.

(A) IN LIEU OF HAVING A PENSION PAYABLE UNDER THE NORMAL ANNUITY FORM, A PARTICIPANT MAY ELECT TO RECEIVE PENSION BENEFITS OF ACTUARIALLY EQUIVALENT VALUE UNDER THE CONTINGENT ANNUITANT OPTION BY FILING WRITTEN NOTICE WITH THE PERSONNEL OFFICER PRIOR TO THE PARTICIPANT'S NORMAL RETIREMENT DATE. IF THE ELECTION OF OPTIONAL FORM IS IN EFFECT ON THE PARTICIPANT'S NORMAL RETIREMENT DATE, THE PARTICIPANT SHALL RECEIVE A REDUCED AMOUNT OF PENSION BENEFIT DURING THE PARTICIPANT'S LIFETIME. AFTER DEATH, A PENSION BENEFIT SHALL BE CONTINUED

AND PAID FOR LIFE TO THE REMAINING SPOUSE OR OTHER NAMED CONTINGENT ANNUITANT, IF SURVIVING, IN THE SAME REDUCED AMOUNT AS SPECIFIED IN THE ELECTION. IF THE PARTICIPANT OR THE PARTICIPANT'S CONTINGENT ANNUITANT DIES, THE ELECTION OF THE CONTINGENT ANNUITANT OPTION IS SUBJECT TO THE FOLLOWING:

(1) IF THE PARTICIPANT OR CONTINGENT ANNUITANT DIES BEFORE THE PARTICIPANT'S NORMAL RETIREMENT DATE, THE OPTION SHALL BE VOID; OR

(2) IF THE CONTINGENT ANNUITANT DIES ON OR AFTER THE PARTICIPANT'S NORMAL RETIREMENT DATE, BUT BEFORE THE DATE THE PARTICIPANT ACTUALLY RETIRES, THE PENSION PAYABLE TO THE PARTICIPANT UPON ACTUAL RETIREMENT SHALL BE IN THE SAME AMOUNT AS IT WOULD HAVE BEEN IF THE CONTINGENT ANNUITANT OPTION HAD NOT BEEN ELECTED.

(B) THE ELECTION OF THE CONTINGENT ANNUITANT OPTION SHALL BE MADE ON A FORM RERQUIRED BY THE PERSONNEL OFFICER AND SHALL BE SUBMITTED ~~AT LEAST SIX MONTHS~~ BEFORE THE EFFECTIVE DATE OF RETIREMENT.

3-213. Death benefits— Before Retirement.

(A) DEATH BENEFITS SHALL BE PAID IN ACCORDANCE WITH §3-214 OR §3-215, AS APPLICABLE, IF A PARTICIPNAT'S DEATH OCCURS:

(1) BEFORE THE PARTICIPANT'S DATE OF

RETIREMENT; OR

(2) BEFORE THE PARTICIPANT'S NORMAL RETIREMENT DATE IF A PARTICIPANT WAS DETERMINED TO BE TOTALLY AND PERMANENTLY DISABLED AS A RESULT OF AN OCCUPATIONAL CAUSE, IN ACCORDANCE WITH §3-210 OF THIS TITLE.

(B) ON THE DEATH OF A PARTICIPANT WHO DOES NOT MEET THE CONDITIONS OF §3-214 OR §3-215 OF THIS TITLE BEFORE THE DATE OF RETIREMENT, OR THE NORMAL REITREMENT DATE IN THE CASE OF A PARTICIPANT WHO IS RECEIVING DISABILITY BENEFITS UNDER THIS TITLE, THERE SHALL BE REFUNDED TO THE PARTICIPANT'S BENEFICIARY OR ESTATE AN AMOUNT EQUAL TO:

(1) THE PARTICIPANT'S CONTRIBUTIONS TOGETHER WITH CREDITED INTEREST TO THE PARTICIPANT'S DATE OF DEATH; AND

(2) 50% OF THE PARTICIPANT'S FINAL EARNING, PROVIDED THE PARTICIPANT HAS ONE YEAR OR MORE OF CREDITED SERVICE.

3-214. Same— Surviving Spouse.

(A) THE SURVIVING SPOUSE OF A PARTICIPANT BECOMES ELIGIBLE TO RECEIVE THE MONTHLY DEATH BENEFIT PAYMENTS PROVIDED FOR IN THIS TITLE, COMMENCING AS OF THE FIRST DAY OF THE MONTH COINCIDING WITH OR NEXT FOLLOWING THE PARTICIPANT'S DEATH AND CEASING AT THE DEATH OR REMARRIAGE OF THE SPOUSE, WHICHEVER OCCURS FIRST, IF:

(1) THE PARTICIPANT HAD COMPLETED AT LEAST 12 YEARS OF SERVICE;

(2) THE PARTICIPANT WAS AT LEAST 50 YEARS OLD; AND

(3) THE PARTICIPANT HAD BEEN MARRIED TO THE SURVIVING SPOUSE FOR AT LEAST ONE YEAR.

(B) THE ANNUAL BENEFIT PAYABLE TO THE SPOUSE IS THE GREATER OF:

(1) $120; OR

(2) 50% OF THE PARTICIPANT'S ACCRUED NORMAL RETIREMENT PENSION.

3-215. Same— Surviving children.

(A) IF THE PARTICIPANT IS SURVIVED BY ONE OR MORE UNMARRIED CHILDREN UNDER THE AGE OF 18 YEARS, DEATH BENEFITS SHALL BE PAID TO THE CHILDREN COMMENCING WITH THE FIRST DAY OF THE MONTH FOLLOWING THE PARTICIPANT'S DEATH. DEATH BENEFIT PAYMENTS SHALL BE PAYABLE TO THE PARTICIPANT'S UNMARRIED CHILDREN AS A GROUP, WITH EACH CHILD BECOMING INELIGIBLE TO RECEIVE PAYMENTS ON ATTAINING THE AGE OF 18 YEARS OR ON MARRIAGE, WHICHEVER FIRST OCCURS. WHEN ALL OF THE PARTICIPANT'S UNMARRIED CHILDREN ATTAIN THE AGE OF 18 YEARS, NO FURTHER BENEFITS ARE PAYABLE.

(B) THE TOTAL ANNUAL BENEFIT PAYABLE IN THE AGGREGATE TO ALL SUCH CHILDREN UNDER THIS

SECTION IS EQUAL TO 50% OF THE PARTICIPANT'S ACCRUED NORMAL RETIREMENT PENSION, BUT NOT LESS THAN $120.

3-216. Death benefits— After retirement.

(A) BENEFITS SHALL B PAID IN ACCORDANCE WITH SUBSECTION (B) OF THIS SECTION:

(1) ON THE DEATH OF A PARTICIPANT AFTER THE PARTICIPANT'S RETIREMENT DATE;

(2) ON THE DEATH OF A PARTICIPANT AFTER THE PARTICIPANT'S NORMAL RETIREMENT DATE IF THE PARTICIPANT HAS BEEN DETERMINED TO BE TOTALLY AND PERMANENTLY DISABLED IN ACCORDANCE WITH §3-210 OF THIS TITLE; AND

(3) ON THE DEATH OF THE PARTICIPANT AND THE PARTICIPANT'S CONTINGENT ANNUITANT.

(B) THE BENEFICIARY IS ENTITLED TO RECEIVE A DEATH BENEFIT IF THE AMOUNT OF PAYMENTS MADE UNDER THIS TITLE TO THE PARTICIPANT AND THE PARTICIPANT'S CONTINGENT ANNUITANT DO NOT EQUAL THE AMOUNT OF THE PARTICIPANT'S CONTRIBUTIONS PLUS CREDITED INTEREST TO THE DATE OF RETIREMENT OR DISABILITY, PAYMENTS SHALL BE MADE IN A LUMP SUM TO THE PAYEE LAST ENTITLED TO THEBENEFITS, OR TO THE ESTATE OF THE PAYEE.

SECTION 3. *And be it further enacted*, That the provisions of Section 2 of this Ordinance apply to all participants who retire on or after December 19, 1987, except that any election made

under the provisions of Article 7, §3-209 as in effect before the effective date of this Ordinance, by a participant who retires before the effective date of this Ordinance, shall continue to be valid, and those provisions shall continue to apply to that election as if those provisions had not been repealed.

~~For participants who retired between December 19, 1987 and the effective date of this Ordinance, the Personnel Officer shall give notice of the provisions of this Ordinance to those participants who had not made an election of the contingent annuitant option.~~ THE PERSONNEL OFFICER SHALL GIVE NOTICE OF THE PROVISIONS OF THIS ORDINANCE TO THOSE PARTICIPANTS WHO DID NOT MAKE AN ELECTION OF THE CONTINGENT ANNUITANT AND WHO ARE STILL EMPLOYED AND AT OR BEYOND THEIR NORMAL RETIREMENT DATES, OR WHO RETIRED BETWEN DECEMBER 19, 1987 AND THE EFFECTIVE DATE OF THIS ORDINANCE. Any of those participants desiring to make an election of the contingent annuitant option shall make such an election within 60 days of receipt of notice from the Personnel Officer. Any participant making such an election shall thereafter receive a reduced amount of pension benefit during that participant's lifetime, in accordance with actuarial computations and as provided in Artice 7, §3-209 as enacted by Section 2 of this Ordinance.

Participants who retired prior to December 19, 1987, and their spouses or other beneficiaries shall receive those death, surviving spouse, and dependent children benefits to which they were entitled under the Retirement Plan for Appointed and Elected Officials as constituted prior to the enactment of Bill No. 56-87.

The provisions of this Ordinance do not apply to the surviving spouse or other benficiaries of a participant already

deceased or who dies before the effective date of this Ordinance, and the surviving spouse or other beneficiaries of that participant shall receive those death, surviving spouse, and dependent children benefits in effect at the time of the participant's death.

SECTION 4. *And be it further enacted*, That if any provision of this Ordinance or the application thereof to any person or circumstance is held invalid for any reason in a court of competent jursdiction, the invalidity does not affect other provisions or any other application of this Ordinance which can be given effect without the invalid provision or application, and for this purpose the provisions of this Ordinance are declared severable.

SECTION 5. *And be it further enacted*, That this Ordinance shall tke effect 45 days from the date it becomes law.

AMENDMENTS ADOPTED June 20, 1994

READ AND PASSED, as amended, this 18th day of July, 1994

By Order:

/s/ Judy C. Holmes
Judy C. Holmes
Administrative Officer

PRESENTED to the County Executive for his approval this 19th day of July, 1994

/s/ Judy C. Holmes
Judy C. Holmes
Administrative Officer

APPROVED AND ENACTED this 26th day of July, 1994

/s/ Robert R. Neall
Robert R. Neall
County Executive

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 1989, Legislative Day No. 12

Bill No. 36-89

Introduced by Mrs. Clagett, Chairman
(by the request of the County Executive)

By the County Council, May 4, 1989

Introduced and first read on May 4, 1989
Public Hearing set for and held on May 15, 1989

By Order: Judy C. Holmes, Administrative Officer

A BILL ENTITLED

AN ORDINANCE concerning: Pension - Service, Vesting, and Benefits

FOR the purpose of amending certain provisions pertaining to service, credited service, vesting, and amount of pension benefit in the Employee's Retirement Plan; amending certain provisions pertaining to credited service, retirement age, and amount of pension benefits in the Retirement Plan for Appointed and Elected Officials; and making certain technical corrections pertaining to employees' pensions.

EXPLANATION: CAPITALS indicate new matter added to existing law.
[Brackets] indicate matter stricken from

existing law.

BY repealing and reenacting, with amendments: Article 7, §§2-101(m), 2-202(d), 2-203(c)(3), 2-206, 2-207(a), 2-210(g), 3-101(i), 3-107(b), 3-203(c)(1) and (3), 3-206, 3-207, 3-209, 3-210(f) and (g), and 3-219(a) Anne Arundel County Code (1985, as amended)

BY repealing: Article 7, §3-101(f)
Anne Arundel County Code (1985, as amended)

SECTION 1. *Be it enacted by the County Council of Anne Arundel County, Maryland,* That Section(s) of the Anne Arundel County Code (1985, as amended) read as follows:

ARTICLE 7 PENSIONS
Title 2. Employees' Retirement Plan

2-101. Definitions.

(m) "Service" means:

(1) continuous employment with the County while classified as an employee, computed to the nearest one-twelfth of a year; AND

(2) credited service under the plans established in Title 3, 4, or 5 of this article or under § 2-202(D) OR § 2-203 of this title[;].

[(3) Effective July 1, 1987, active duty military service honorably completed before employment by the County is creditable for determining benefits amount under this plan when:

(i) the employee completes 15 years of actual

service as a member of this plan; and

(ii) satisfactory official documentation is submitted; and

(4) Under the conditions established by paragraph (3) of this subsection, an employee is entitled without cost to a 1.8% pension increase for each year of active military service to a maximum of 5.4% for up to three years of active duty military service toward the amount of the employee's retirement benefits. Amounts creditable are based on minimum three-month increments at 0.45% for each increment. A pension increase may not be credited to employees meeting the requirements of paragraph (2) of this subsection.]

2-202. Determination of service.

(d) (1) Absence from employment on account of active duty with the armed forces of the United States is counted as service if the employee returns to active service with the County within 90 days after becoming eligible for release from active duty.

(2) [Effective July 1, 1987, active duty military service honorably completed before employment by the County is creditable for determining benefits amounts under this title when:] AN EMPLOYEE WHO RETIRES BETWEEN JULY 1, 1987 AND JUNE 30, 1989 IS ENTITLED TO CREDIT IN DETERMINING BENEFITS AMOUNTS UNDER THIS TITLE FOR ACTIVE DUTY MILITARY SERVICE HONORABLY COMPLETED BEFORE EMPLOYMENT BY THE COUNTY WHEN:

(i) the employee completes 15 years of actual service as a member of this plan; and

(ii) satisfactory official documentation is submitted.

(3) Under the conditions established by paragraph (2) of this subsection, an employee is entitled without cost to a 1.8% pension increase for each year of active military service to a maximum of [6%] 5.4% for up to three years of active duty military service toward the amount of the employee's retirement benefits. Amounts creditable are based on minimum three-month increments at 0.45% for each increment. A pension increase may not be credited to employees meeting the requirements of paragraph (1) of this subsection.

(4) AN EMPLOYEE WHO RETIRES ON OR AFTER JULY 1, 1989, IS ENTITLED TO CREDIT IN DETERMINING BENEFITS AMOUNTS UNDER THIS TITLE FOR ACTIVE DUTY MILITARY SERVICE HONORABLY COMPLETED BEFORE EMPLOYMENT BY THE COUNTY WHEN:

(I) THE EMPLOYEE COMPLETES FIVE YEARS OF ACTUAL SERVICE AS A MEMBER OF THIS PLAN; AND

(II) SATISFACTORY OFFICIAL DOCUMENTATION IS SUBMITTED.

(5) UNDER THE CONDITIONS ESTABLISHED BY PARAGRAPH (4) OF THIS SUBSECTION, AN EMPLOYEE IS ENTITLED WITHOUT COST TO A 2.0% PENSION INCREASE FOR EACH YEAR OF ACTIVE MILITARY SERVICE TO A MAXIMUM OF 6% FOR UP TO THREE YEARS OF ACTIVE DUTY MILITARY SERVICE TOWARD THE AMOUNT OF THE EMPLOYEE'S RETIREMENT BENEFITS. AMOUNTS CREDITABLE ARE

BASED ON MINIMUM THREE-MONTH INCREMENTS AT 0.5% FOR EACH INCREMENT. A PENSION INCREASE MAY NOT BE CREDITED TO EMPLOYEES MEETING THE REQUIREMENTS OF PARAGRAPH (1) OF THIS SUBSECTION.

2-203. Determination of credited service.

(c) (3) An election to credit service shall be made within [one year] FIVE YEARS of initial appointment or on or before [April 11, 1986] JULY 1, 1990, whichever is later. Payment for credited service shall be completed within five years after the date the employee elects to make the purchase, and pension benefits may not commence until the credited service has been paid for in full.

2-206. Vesting and [Termination] termination of service before retirement.

(a) If an employee's service with the County terminates before the employee's retirement date and after the employee has completed [at least 10] FIVE years of service, the employee may elect to:

(1) be paid the employee participant's contributions with credited interest, thus ceasing to be a participant; or

(2) receive a retirement pension, beginning on the first of the month coinciding with or next following the employee's 60th birthday.

(b) The retirement pension [provided for] SPECIFIED in subsection (a)(2) of this section shall be provided in the following manner:

(1) the participant shall elect to leave the participant's contributions in the pension fund; AND

(2) ON COMPLETION OF FIVE YEARS OF ACTUAL SERVICE WITH THE COUNTY, THE PARTICIPANT SHALL RECEIVE A VESTED OWNERSHIP IN THE AMOUNT OF THE PARTICIPANT'S NORMAL RETIREMENT PENSION WHICH HAS ACCRUED TO THE PARTICIPANT'S DATE OF TERMINATION.

[(2) the participant shall receive a vested ownership in a percentage of the amount of the participant's normal retirement pension which has accrued to the participant's date of termination, based on the participant's years of service as follows:

Completed Years of Service	Percentage of Vesting in Normal Retirement Pension
10	75
11	80
12	85
13	90
14	95
15	100

(3) the amount of the pension shall be computed by multiplying 1 2/3% of the participant's average final earnings by the participant's years of credited service times:

(i) 75% for 10 years of service;

(ii) 80% for 11 years of service;

(iii) 85% for 12 years of service;

(iv) 90% for 13 years of service;

(v) 95% for 14 years of service; and

(vi) 100% for 15 or more years of service.

(c) If an employee's service with the County terminates before the employee's retirement date and before the employee has completed [10] FIVE years of service, the employee shall be paid the employee participant's contributions with credited interest and the employee shall cease to be a participant. Participant's contributions paid into the pension fund by other than the employee shall remain in the pension fund if the employee ceases to be a participant.

(d) If a terminated vested employee dies before reaching the first of the month coinciding with or next following the employee's 60th birthday, the employee's beneficiary is entitled to a single lump sum death benefit payment equal to the employee participant's contributions with credited interest.

2-207. Normal or early retirement.

(a) Each participant, other than one who is receiving disability pension payments in accordance with § 2-210 of this subtitle, who retires on or after the participant's normal retirement date is to receive, commencing on the first day of the month coinciding with or next following the participant's date of retirement, an annual pension equal to [1.8%] 2% of the participant's final earnings for each year of credited service, not exceeding 60% of the participant's final earnings.

2-210. Disability pension.

(g) The annual amount of disability pension payable to each eligible participant is:

(1) if the participant is deemed to be totally and permanently disabled under subsection (b) of this section, equal to A minus B, where:

(i) A is the greater of:

1. [1.8%] 2% of the participant's final earnings for each year of credited service, provided that the total benefit so computed does not exceed 60% of the participant's final earnings; or

2. 25% of final earnings; and

(ii) B is the amount of earnings received by the employee during the year in a gainful occupation, to the extent that the earnings exceed the current earnings of an employee similarly classified; or

(2) if the participant is deemed to be totally and permanently disabled under subsection (c) of this section, equal to 66 2/3% of the participant's final earnings.

Title 3. Retirement Plan for Appointed and Elected Officials

3-101. Definitions.

[(f) "Effective early retirement date" means the date as of which a participant becomes entitled to receive a pension as determined in accordance with § 3-207(c) of this title.]

(i) "Normal retirement date" means the first day of the month after the earlier of a participant's [60th] 50th birthday or

the date as of which a participant completes 16 years of service.

3-107. Determination of actuarial equivalent.

(b) Except as provided in subsection (c) of this section, the early retirement adjustment factors on which the actuarial equivalent is based are a normal retirement age of [60] 50, reduced 0.5% for each month for the first 60 months, 0.3% for each month for the next 60 months, and 0.2% for each month date of this plan for the next 10 years.

3-203. Determination of credited services.

(c) (1) Each employee may obtain credited service under this title for full-time permanent civilian employment with:

(i) the State or a political subdivision of the State; or

(ii) any other [government, including other states and their political subdivisions] FEDERAL, STATE, OR LOCAL GOVERNMENTAL AGENCY OR ENTITY WITHIN THE UNITED STATES OR ITS TERRITORIES for no more than seven years of full-time employment.

(3) An election to credit service shall be made within the later to occur of [one year] FIVE YEARS of initial appointment or JULY 1, 1995.[:

(i) for credited service under § 3-203(c)(1)(i) on or before April 11, 1986; and

(ii) for credited service under § 3-203(c)(1)(ii), within one year from the effective date of Bill No. 56-87.]

3-206. Termination of service before retirement.

(a) If an employee's service with the County terminates or the employee ceases to be classified as an employee under this title before the employee's retirement date and after the employee has completed at least five years of credited service, the employee may elect to:

(1) be paid the employee participant's contribution with credited interest, thus ceasing to be a participant; or

(2) receive a retirement pension, beginning on the first day of the month after the employee's [60th] 50th birthday.

(b) The retirement pension provided for subsection (a)(2) of this section shall be provided in the following manner:

(1) the participant shall leave the participant's contributions in the pension fund; and

(2) the participant is entitled to receive a retirement pension in an amount equal to the participant's accrued normal pension computed in accordance with § 3-207(a)[(1)] OR (B) of this article on the basis of the participant's credited service as of the date of the participant's termination, but the amount so determined may not be less than the accrued normal pension attributable to the participant's contributions together with credited interest on the contributions.

(c) If an employee's service with the County terminates or the employee ceases to be classified as an employee under this title before the employee's retirement date and before the employee has completed five years of credited service, the employee may elect to:

(1) be paid the participant's contributions with credited interest, thus ceasing to be a participant; or

(2) receive a retirement pension, beginning on the first day of the month after the employee's [60th] 50th birthday in an amount equal to the amount of accrued normal pension attributable to the employee participant's contributions, together with credited interest thereon.

3-207. Normal [or early] retirement.

[(a) Each participant retiring on or after the participant's normal retirement date who has completed five years of service is entitled to receive, commencing on the first day of the month coinciding with or next following the participant's date of retirement, an annual pension equal to the greater of:

(1) two percent of the participant's final earnings for each year of credited service not exceeding 70% of the participant's final earnings; or

(2) $1, 200.]

(A) EACH APPOINTED OFFICIAL WHO RETIRES ON OR AFTER THE NORMAL RETIREMENT DATE WHO HAS BEEN CREDITED WITH FIVE YEARS OF SERVICE IS ENTITLED TO RECEIVE, COMMENCING ON THE FIRST DAY OF THE MONTH COINCIDING WITH OR NEXT FOLLOWING THE DATE OF RETIREMENT, AN ANNUAL PENSION EQUAL TO THE GREATER OF:

(1) $4,800; OR

(2) 2 1/2% OF THE FINAL EARNINGS FOR EACH

YEAR OF CREDITED SERVICE WHICH IS NOT IN EXCESS OF 20 YEARS, PLUS AN ADDITIONAL 2% OF FINAL EARNINGS FOR EACH YEAR OF CREDITED SERVICE AFTER 20 YEARS, BUT THE MAXIMUM PENSION MAY NOT EXCEED 70% OF FINAL EARNINGS.

(B) EACH ELECTED OFFICIAL WHO RETIRES ON OR AFTER THE NORMAL RETIREMENT DATE WHO HAS BEEN CREDITED WITH FIVE YEARS OF SERVICE IS ENTITLED TO RECEIVE, COMMENCING ON THE FIRST DAY OF THE MONTH COINCIDING WITH OR NEXT FOLLOWING THE DATE OF RETIREMENT, AN ANNUAL PENSION EQUAL TO THE GREATER OF:

(1) $4,800; OR

(2) TWO PERCENT OF THE FINAL EARNINGS FOR EACH YEAR OF CREDITED SERVICE NOT EXCEEDING 70% OF FINAL EARNINGS.

[(b)] (C) Each employee who is not receiving or is not eligible to receive a pension benefit under the Maryland State Retirement System, or a plan established in Titles 2, 4, or 5 of this article, as of the date of eligibility for pension under this Title, and who has completed at least five years of credited service on or before July 30, 1973, is eligible to receive an annual pension of [$1,200] $4,800 beginning on the latest of the following:

(1) July 1, [1973] 1989; OR

(2) the first day of the month after the employee's [60th] 50th birthday[; or

(3) the first day of the month following submission of

application for the pension to the Personnel Officer].

[(c) A participant who is at least 50 years old and is under the age of 60 years and has completed at least five years of service may retire early, and on retirement is entitled to receive, commencing on the first day of the month coinciding with or next following the participant's date of retirement, a reduced annual pension equal to the actuarial equivalent of the participant's accrued normal pension, determined by the insurance company, of the participant's accrued normal pension computed in accordance with subsection (a) of this section, on the basis of the participant's credited service completed prior to actual retirement.]

3-209. Contingent annuitant option.

If a participant at the time of retirement does not have an eligible spouse or minor child, the participant may elect to receive pension benefits of actuarially equivalent value under the contingent annuitant option by filing written notice with the Personnel officer prior to he participant's [early retirement date] or normal retirement date[, whichever first occurs]. If the election of this optional form is in effect on the participant's [early retirement date or] normal retirement date[, whichever first occurs], the participant shall receive a reduced amount of pension benefits during the participant's lifetime and following the participant's death a pension benefit shall be continued and paid for life to the participant's surviving contingent annuitant, in the same reduced amount or two-thirds or 50% of the benefit if so specified in the election; but if the participant dies during the five-year period immediately following the participant's date of retirement, pension payments which become payable to the contingent annuitant during the balance of the five-year period shall be in the same yearly amount as the pension payments which were payable to the participant. When either

the participant or the participant's contingent annuitant dies, the election of the contingent annuitant option shall be subject to the following:

(1) if the participant or contingent annuitant dies before [the earlier of] the participant's [early retirement date or] normal retirement date, the option shall be void; or

(2) if the contingent annuitant dies on or after the participant's normal retirement date, but before the date the participant actually retires, the pension payable to the participant upon actual retirement shall be in the same amount as it would have been if the contingent annuitant option had not been elected.

3-210. Disability pension.

(f) Disability pension benefits payable to a participant automatically cease when the participant reaches [60] 50 years of age. At that time the participant is entitled to receive a normal retirement pension under this title. The amount of the normal retirement pension shall be determined in accordance with subsection (g) of this section.

(g) The annual amount of disability pension payable to each eligible participant is:

(1) if the participant is deemed to be totally and permanently disabled under subsection (b) of this section, the greater of:

(i) the annual amount of the participant's accrued normal retirement pension as of the participant's date of disability computed in accordance with § 3-207(a) OR (B) of this subtitle; or

(ii) 25% of the participant's final earnings; or

(2) if the participant is deemed to be totally and permanently disabled under subsection (c) of this section, the annual amount of the participant's disability is equal to 66 2/3% of the participant's final earnings.

3-219. Cost-of-living adjustment.

(a) If the plan has not been terminated, a cost-of-living adjustment shall be calculated in accordance with subsection (b), (c), and (d) of this section commencing with each plan anniversary following:

(1) the retirement date of a participant; or

(2) the death of a participant whose spouse or beneficiary is eligible for monthly death benefit payments as provided in [§§ 3-214 and 3-215] § 3-213 of this subtitle.

SECTION 2. *And be it further enacted*, That Article 7, §§2-207(a) and 2-210(g) of the Anne Arundel County Code as enacted by this Ordinance shall apply to employees who retire under the provisions of the Employee's Retirement Plan on and after July 1, 1989; and the provision of Article 7, §§2-207(a) and 2-210(g) of the Anne Arundel County Code, as those provision existed prior to the enactment of the Ordinance, pertaining to the amount of pension benefits, shall continue to apply to employees who retire under the provisions of the Employees' Retirement Plan on or before June 30, 1989.

SECTION 3. *And be it further enacted*, That except with regard to Article 7, §3-207(c) of the Anne Arundel County Code as enacted by this Ordinance, those sections of Article 7, Title 3, of the Anne Arundel County Code enacted by this Ordinance

shall apply to employees who retire under the provisions of that Title on and after July 1, 1990; and the provisions of Article 7, Title 3 of the Anne Arundel County Code, as those provision existed prior to the enactment of the Ordinance, pertaining to credited service, normal retirement age, and amount of pension benefits, shall continue to apply to employees who retire under the provisions of that Title on or before June 30, 1990. The provisions of Article 7, § 3-207(c) of the Anne Arundel County Code as enacted by this Ordinance shall apply to any employee, including any retired employee, who meets the criteria set forth in that section on the effective date of the Ordinance, it being the intent of the County Council to increase prospectively the minimum pension set forth in that section for employees who are receiving the minimum pension on the effective date of this Ordinance.

SECTION 4. *And be it further enacted*, That this Ordinance shall take effect 45 days from the date it becomes law.

READ AND PASSED this 15th day of May, 1989.

By Order:

/s/ Judy C. Holmes
Judy C. Holmes
Administrative Officer

PRESENTED to the County Executive for his approval this 16th day of May, 1989.

/s/ Judy C. Holmes
Judy C. Holmes
Administrative Officer

APPROVED AND ENACTED: May 17th, 1989.

/s/ O. James Lighthizer
O. James Lighthizer
County Executive

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 1987, Legislative Day No. 32

Bill No. 56-87

Introduced by Mrs. Clagett, Chairman
(by request of the County Executive)

By the County Council, August 3, 1987

Introduced and first read on August 3, 1987
Public Hearing set for and held on August 17, 1987
Public hearing on AMENDED BILL set for and held on October 5, 1987
Public Hearing on SECOND AMENDED BILL set for and held on October 19, 1987
Public Hearing on THIRD AMENDED BILL set for November 2, 1987

By Order: Judy C. Holmes, Administrative Officer

A BILL ENTITLED

AN ORDINANCE concerning: Personnel — Pensions

EXPLANATION: [Brackets] indicate matter stricken from existing law.
CAPITALS indicate new matter added to existing law.
Underlining indicates amendments to bill.

FOR the purpose of clarifying the definition of service in the Retirement Plan for Appointed and Elected Officials and the Executive Pay and Benefit Plan; providing for additional credited service under that Retirement Plan; amending certain provisions pertaining to the contingent annuitant option and death benefits under that Retirement Plan; generally relating to Appointed and Elected Officials; and permitting the crediting of certain military service for employees under the Employees' Retirement Plan.

BY repealing and reenacting with amendments: Article 7, Section 3-101(n) and 3-203(c)
Anne Arundel County Code (1985, as amended)

By repealing: Article 7, Sections 3-209, 3-213, 3-214, 3-215, and 3-216
Anne Arundel County Code (1985, as amended)

By adding: Article 7, Sections 3-209 and 3-213
Anne Arundel County Code (1985, as amended)

By repealing and reenacting with amendments: Article 7, Section 2-202(d); and Article 8, Section 2-101(b)(1) and (3) as added by Bill No. 32-87
Anne Arundel County Code (1985, as amended)

SECTION 1. BE IT ENACTED BY THE COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND, That Article 7, Sections 3-209, 3-213, 3-214, 3-215, and 3-216 of the Anne Arundel County Code (1985, as amended) be repealed.

SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) of the Anne Arundel County Code (1985, as amended) read as follows:

Article 7 Pension Plans
Title 2. Employees' Retirement Plan

2-202. Determination of service.

(d) (1) Absence from employment on account of active duty with the armed forces of the United States is counted as service if the employee returns to active service with the County within 90 days after becoming eligible for release from active duty.

(2) EFFECTIVE JULY 1, 1987, ACTIVE DUTY MILITARY SERVICE HONORABLY COMPLETED BEFORE EMPLOYMENT BY THE COUNTY IS CREDITABLE FOR DETERMINING BENEFITS AMOUNTS~~, FOR BOTH ACTIVE AND RETIRED EMPLOYEES.~~ UNDER THIS TITLE WHEN:

(I) THE EMPLOYEE COMPLETES 15 YEARS OF ACTUAL SERVICE AS A MEMBER OF THIS PLAN; AND

(II) SATISFACTORY OFFICIAL DOCUMENTATION IS SUBMITTED.

(3) UNDER THE CONDITIONS ESTABLISHED BY PARAGRAPH (2) OF THIS SUBSECTION, AN EMPLOYEE IS ENTITLED WITHOUT COST TO A ONE AND EIGHT-TENTHS PERCENT PENSION INCREASE FOR EACH YEAR OF ACTIVE MILITARY SERVICE TO A MAXIMUM OF SIX PERCENT FOR UP TO THREE YEARS OF ACTIVE DUTY MILITARY SERVICE TOWARD THE AMOUNT OF THE EMPLOYEE'S RETIREMENT BENEFITS. AMOUNTS CREDITABLE ARE BASED ON MINIMUM THREE-MONTH INCREMENTS AT 0.45% FOR EACH INCREMENT. A PENSION INCREASE MAY NOT BE CREDITED TO EMPLOYEES MEETING THE

REQUIREMENTS OF PARAGRAPH (1) OF THIS SUBSECTION.

Title 3. Retirement Plan for Appointed and Elected Officials

3-101. Definitions.

(n) "Service" means:

(1) continuous employment with the County while classified as an employee computed to the nearest one-twelfth of a year; and

(2) credited service under the plans established in Titles 2, 4, or 5 of this article or [the employees' retirement system of the State at the time an employee elects coverage under this title in accordance with Section 3-204(a) of this title] UNDER SECTION 3-203 OF THIS TITLE.

3-203. Determination of credited service.

(c) (1) Each employee may obtain credited service under this title for full-time permanent CIVILIAN employment with:

(I) the State or a political subdivision of the State; OR

(II) ANY OTHER GOVERNMENT, INCLUDING OTHER STATES AND THEIR POLITICAL SUBDIVISIONS, FOR NO MORE THAN SEVEN YEARS OF FULL-TIME PERMANENT EMPLOYMENT.

(2) Before receiving the credited service, the employee shall forfeit the benefits under previous retirement plans of the

prior employees and shall pay into the plan established by this title the amount of money actuarially determined necessary by the County to purchase in full the credited service. The actuarial computation is based on actual compensation received during the period of service for which past credit is desired. Payments for the credited service shall be completed within five years after the date the employee elects to make the purchase.

(3) An election to credit service shall be made within THE LATER TO OCCUR OF one year of initial appointment or:

(I) FOR CREDITED SERVICE UNDER SECTION 3-203(C)(1)(I) on or before April 11, 1986; AND

(II) FOR CREDITED SERVICE UNDER SECTION 3-203(C)(1)(II), WITHIN ONE YEAR FROM THE EFFECTIVE DATE OF BILL NO. 56-87;

(4) Payment will be completed within five years after the date the employee elects to make the purchase, and pension benefits may not commence until the credited service has been paid in full.

[(4)] (5) Notwithstanding other provisions of this title, a participant who purchases credited service under this section and voluntarily terminates employment, or is terminated from employment for cause, may not receive benefits under this title unless 36 months of actual service have been completed in the County government.

3-209. Contingent annuitant option.

IF A PARTICIPANT AT THE TIME OF RETIREMENT DOES NOT HAVE AN ELIGIBLE SPOUSE

OR MINOR CHILD, THE PARTICIPANT MAY ELECT TO RECEIVE PENSION BENEFITS OF ACTUARIALLY EQUIVALENT VALUE UNDER THE CONTINGENT ANNUITANT OPTION BY FILING WRITTEN NOTICE WITH THE PERSONNEL OFFICER PRIOR TO THE PARTICIPANT'S EARLY RETIREMENT DATE OR NORMAL RETIREMENT DATE, WHICHEVER FIRST OCCURS. IF THE ELECTION OF THIS OPTIONAL FORM IS IN EFFECT ON THE PARTICIPANT'S EARLY RETIREMENT DATE OR NORMAL RETIREMENT DATE, WHICHEVER FIRST OCCURS, THE PARTICIPANT SHALL RECEIVE A REDUCED AMOUNT OF PENSION BENEFITS DURING THE PARTICIPANT'S LIFETIME AND FOLLOWING THE PARTICIPANT'S DEATH A PENSION BENEFIT SHALL BE CONTINUED AND PAID FOR LIFE TO THE PARTICIPANT'S SURVIVING CONTINGENT ANNUITANT, IN THE SAME REDUCED AMOUNT, OR TWO-THIRDS OR 50% OF THE BENEFIT IF SO SPECIFIED IN THE ELECTION; BUT IF THE PARTICIPANT DIES DURING THE FIVE-YEAR PERIOD IMMEDIATELY FOLLOWING THE PARTICIPANT'S DATE OF RETIREMENT, PENSION PAYMENTS WHICH BECOME PAYABLE TO THE CONTINGENT ANNUITANT DURING THE BALANCE OF THE FIVE-YEAR PERIOD SHALL BE IN THE SAME YEARLY AMOUNT AS THE PENSION PAYMENTS WHICH WERE PAYABLE TO THE PARTICIPANT. WHEN EITHER THE PARTICIPANT OR THE PARTICIPANT'S CONTINGENT ANNUITANT DIES, THE ELECTION OF THE CONTINGENT ANNUITANT OPTION SHALL BE SUBJECT TO THE FOLLOWING:

(1) IF THE PARTICIPANT OR CONTINGENT ANNUITANT DIES BEFORE THE EARLIER OF THE PARTICIPANT'S EARLY RETIREMENT DATE OR NORMAL RETIREMENT DATE, THE OPTION SHALL BE

VOID; OR

(2) IF THE CONTINGENT ANNUITANT DIES ON OR AFTER THE PARTICIPANT'S NORMAL RETIREMENT DATE, BUT BEFORE THE DATE THE PARTICIPANT ACTUALLY RETIRES, THE PENSION PAYABLE TO THE PARTICIPANT UPON ACTUAL RETIREMENT SHALL BE IN THE SAME AMOUNT AS IT WOULD HAVE BEEN IF THE CONTINGENT ANNUITANT HAD NOT BEEN ELECTED.

3-213. Death Benefits.

(A) MONTHLY DEATH BENEFITS SHALL BE PAID UNDER SUBSECTION (B) OF THIS SECTION IF:

(1) A PARTICIPANT'S DEATH OCCURS BEFORE THE PARTICIPANT'S DATE OF RETIREMENT, OR BEFORE THE NORMAL RETIREMENT DATE WITH RESPECT TO A PARTICIPANT WHO WAS DETERMINED TO BE TOTALLY AND PERMANENTLY DISABLED IN ACCORDANCE WITH SECTION 3-210(B) OF THIS SUBTITLE; AND

(2) BEFORE THE PARTICIPANT'S DATE OF DEATH OR DATE OF DISABILITY, WHICHEVER FIRST OCCURS, THE PARTICIPANT WAS MAKING PARTICIPANT'S CONTRIBUTIONS UNDER THIS TITLE.

(B) THE FOLLOWING SHALL APPLY WHEN THE REQUIREMENTS OF SUBSECTION (A) ARE SATISFIED:

(1) IF THE PARTICIPANT IS SURVIVED BY A SPOUSE, THE SPOUSE SHALL BECOME ELIGIBLE TO RECEIVE MONTHLY DEATH BENEFIT PAYMENTS IN

AN AMOUNT DETERMINED IN THIS SECTION COMMENCING AS OF THE FIRST DAY OF THE MONTH COINCIDING WITH OR NEXT FOLLOWING THE PARTICIPANT'S DEATH AND CEASING AS OF THE EARLIER OF THE SPOUSE'S DATE OF DEATH OR DATE OF REMARRIAGE; OR

(2) IF THE PARTICIPANT IS SURVIVED BY ONE OR MORE UNMARRIED CHILDREN UNDER THE AGE OF 18 YEARS, COMMENCING WITH THE FIRST DAY OF THE MONTH FOLLOWING THE PARTICIPANT'S DEATH. DEATH BENEFIT PAYMENTS SHALL BE PAYABLE TO THE PARTICIPANT'S UNMARRIED CHILDREN UNDER THE AGE OF 18 YEARS AS A GROUP, WITH EACH CHILD BECOMING INELIGIBLE TO RECEIVE PAYMENTS ON ATTAINING THE AGE OF 18 YEARS OR ON MARRIAGE, WHICHEVER OCCURS FIRST; OR

(3) IF THE PARTICIPANT IS SURVIVED BY A SPOUSE, DEATH BENEFIT PAYMENTS SHALL BE PAID AS PROVIDED UNDER PARAGRAPH (1) OF THIS SUBSECTION AND, IN ADDITION, AFTER THE DEATH OF THE SPOUSE, IF THERE IS A SURVIVING UNMARRIED CHILD UNDER THE AGE OF 18 YEARS, DEATH BENEFIT PAYMENTS SHALL BE PAID AS PROVIDED UNDER PARAGRAPH (2) OF THIS SUBSECTION NOTWITHSTANDING ANY TERMS OF THAT PARAGRAPH TO THE CONTRARY.

(C) THE MONTHLY AMOUNT OF DEATH BENEFITS PAYABLE IN RESPECT TO A PARTICIPANT WHOSE DEATH OCCURS AS A DIRECT RESULT OF THE ACTIVE PERFORMANCE OF DUTIES SHALL BE EQUAL TO 66 2/3% OF THE PARTICIPANT'S FINAL EARNINGS.

(D) THE MONTHLY AMOUNT OF DEATH BENEFIT PAYMENTS PAYABLE WITH RESPECT TO AN ELIGIBLE PARTICIPANT WHOSE DEATH DID NOT OCCUR AS A DIRECT RESULT OF THE ACTIVE PERFORMANCE OF DUTIES SHALL BE EQUAL TO THE PARTICIPANT'S MONTHLY ACCRUED PENSION COMPUTED IN ACCORDANCE WITH SECTION 3-207(A) OF THIS SUBTITLE.

(E) THERE SHALL BE REFUNDED TO THE PARTICIPANT'S BENEFICIARY OR ESTATE AN AMOUNT EQUAL TO THE EXCESS OF THE PARTICIPANT'S CONTRIBUTIONS TOGETHER WITH CREDITED INTEREST TO THE PARTICIPANT'S DATE OF DEATH OVER THE TOTAL PAYMENT MADE ON BEHALF OF THE PARTICIPANT'S COVERAGE UNDER THIS TITLE.

(1) IF A PARTICIPANT DIES PRIOR TO THE PARTICIPANT'S DATE OF RETIREMENT OR PRIOR TO THE PARTICIPANT'S NORMAL RETIREMENT DATE IN THE CASE OF A PARTICIPANT WHO WAS DETERMINED TO BE TOTALLY DISABLED IN ACCORDANCE WITH SECTION 3-210(B) OF THIS SUBTITLE FROM AN ON-DUTY CAUSE WITHOUT A SURVIVING SPOUSE OR AN UNMARRIED MINOR CHILD; OR

(2) IF A PARTICIPANT OTHER THAN ONE WITH RESPECT TO WHOM MONTHLY DEATH BENEFITS ARE PAYABLE UNDER SUBSECTION (A), (B), OR (C) OF THIS SECTION, DIES PRIOR TO THE PARTICIPANT'S NORMAL RETIREMENT DATE AND IS RECEIVING DISABILITY BENEFITS; OR

(3) IF A MONTHLY DEATH BENEFIT AS DESCRIBED IN THIS SUBSECTION IS BEING PAID TO A PARTICIPANT'S SURVIVING SPOUSE OR UNMARRIED MINOR CHILDREN, AND IF UPON THE CESSATION OF DEATH BENEFIT PAYMENTS THE TOTAL AMOUNT OF THE PAYMENTS MADE UNDER THIS TITLE TO THE PARTICIPANT, THE SURVIVING SPOUSE AND THE PARTICIPANT'S UNMARRIED MINOR CHILDREN DO NOT AT LEAST EQUAL THE AMOUNT OF THE PARTICIPANT'S CONTRIBUTIONS TOGETHER WITH CREDITED INTEREST TO THE PARTICIPANT'S DATE OF DEATH.

(F) IF A PARTICIPANT WHO HAS NOT ELECTED A CONTINGENT ANNUITANT OPTION IN ACCORDANCE WITH SECTION 3-209 OF THIS SUBTITLE DIES AFTER THE PARTICIPANT'S DATE OF RETIREMENT, OR AFTER THE PARTICIPANT'S NORMAL RETIREMENT DATE WITH RESPECT TO A PARTICIPANT WHO IS DETERMINED TO BE TOTALLY AND PERMANENTLY DISABLED IN ACCORDANCE WITH SECTION 3-210(B) OF THIS SUBTITLE, PENSION PAYMENTS PAYABLE TO THE PARTICIPANT SHALL BE CONTINUED IN THE SAME AMOUNT AND PAID TO THE PARTICIPANT'S SPOUSE. IF, UPON THE DEATH OR REMARRIAGE OF A SPOUSE WHO IS RECEIVING PAYMENTS THERE IS A PARTICIPANT'S SURVIVING UNMARRIED MINOR CHILD, PAYMENTS IN THE SAME AMOUNT THAT HAD BEEN PAYABLE TO THE SPOUSE SHALL BECOME PAYABLE TO THE CHILDREN COMMENCING WITH THE FIRST DAY OF THE MONTH FOLLOWING THE SPOUSE'S DEATH OR REMARRIAGE. THE RETIREMENT BENEFITS OF A PARTICIPANT WHO IS NOT SURVIVED BY A SPOUSE SHALL BECOME PAYABLE TO THE PARTICIPANT'S UNMARRIED

MINOR CHILDREN COMMENCING ON THE FIRST DAY OF THE MONTH FOLLOWING THE PARTICIPANT'S DEATH. THE PAYMENT SHALL BE PAYABLE TO SUCH CHILDREN AS A GROUP, WITH EACH CHILD BECOMING INELIGIBLE TO RECEIVE ANY PART OF THE PAYMENT ON BECOMING AN ADULT OR ON MARRIAGE, WHICHEVER FIRST OCCURS. AS OF THE DATE THE PARTICIPANT'S UNMARRIED CHILDREN BECOME ADULTS, NO FURTHER BENEFITS SHALL BE PAYABLE EXCEPT AS PROVIDED IN SUBSECTION (G) OF THIS SECTION.

(G) ON CESSATION OF PENSION PAYMENTS TO THE LAST SURVIVOR UNDER SUBSECTION (F) OF THIS SECTION, WITHIN THE FIVE-YEAR PERIOD COMMENCING ON THE PARTICIPANT'S DATE OF RETIREMENT, OR NORMAL RETIREMENT DATE WITH RESPECT TO A PARTICIPANT DISABLED IN ACCORDANCE WITH SECTION 3-210 OF THIS SUBTITLE, PENSION PAYMENTS IN THE AMOUNT PAYABLE WITH RESPECT TO THE PARTICIPANT'S COVERAGE SHALL BE CONTINUED AND PAID TO THE PARTICIPANT'S BENEFICIARY DURING THE REMAINDER OF THAT PERIOD. IF THE BENEFITS PAID UNDER THIS TITLE DO NOT EQUAL THE AMOUNT OF THE PARTICIPANT'S CONTRIBUTIONS TOGETHER WITH CREDITED INTEREST TO THE PARTICIPANT'S DATE OF RETIREMENT OR DISABILITY, THE EXCESS CONTRIBUTIONS WITH CREDITED INTEREST SHALL BE PAID IN A LUMP SUM TO THE PAYEE LAST ENTITLED TO BENEFITS UNDER THIS TITLE OR THE ESTATE OF THE PAYEE.

Article 8 Personnel
Title 2. Exempt Service

2-101. Executive pay and benefit plan.

(b) (1) In this section "service" has the meaning stated in Article 7, Section 3-101(n) of this Code, AND INCLUDES ALL CREDITED SERVICE WHICH AN EMPLOYEE HAS ELECTED TO OBTAIN AND FOR WHICH THE EMPLOYEE IS MAKING OR HAS COMPLETED PAYMENT.

(3) An employee under the exempt service who [completes] HAS seven years of [credited] service is entitled to a salary increase of five percent of the rate that employee is earning when the service requirement is met.

SECTION 3. AND BE IT FURTHER ENACTED, That the provisions of Article 8, Section 2-101 of the Anne Arundel County Code (1985, as amended), as enacted by this Ordinance, shall apply to the pay period beginning on June 25, 1987.

SECTION 4. AND BE IT FURTHER ENACTED, That this Ordinance shall take effect 45 days from the date it becomes law.

AMENDMENTS ADOPTED September 21, October 5, and October 19, 1987

READ AND PASSED, as amended, this 2nd day of November, 1987.

By Order:

/s/ Judy C. Holmes
Judy C. Holmes
Administrative Officer

PRESENTED to the County Executive for his approval this 4th day of November, 1987.

/s/ Judy C. Holmes
Judy C. Holmes
Administrative Officer

APPROVED AND ENACTED: November 4, 1987.

/s/ O. James Lighthizer
O. James Lighthizer
County Executive

(2)

No. 97-612

FILED
NOV 6 1997
CLERK

In The

Supreme Court of the United States

October Term, 1997

ANNE ARUNDEL COUNTY, MARYLAND,

Petitioner,

vs.

PARKER ANDREWS, JOSEPH N. BURROWS, LINDA G. FINNELLE, MICHAEL F. GILLIGAN, LEROY JONAS, JR., RICHARD F. MAYER, JOSEPH J. McCANN, VERONICA MIXTER, JOSEPH H. NOVOTNY, EMOGENE N. PRICE, DENISE RANKIN, ADRIAN G. TEEL, FRANCIS J. ZYLWITIS,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

GLENN M. COOPER
Counsel of Record
DAVID M. ROTHENSTEIN
PALEY, ROTHMAN, GOLDSTEIN, ROSENBERG & COOPER, CHARTERED
4800 Hampden Lane
Seventh Floor
Bethesda, Maryland 20814
(301) 656-7603

Counsel for Respondents

72401 (800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21 Lutz Appellate Services, inc.

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STATEMENT OF THE CASE

A. The petition ignores the full factual background behind the increase in pension benefits for County appointed and elected officials, and the County's retroactive reduction or withdrawal of those benefits.

In early 1989, the administration of Anne Arundel County Executive O. James Lighthizer was approaching the last year of its statutorily imposed two-term limit. Mr. Lighthizer recognized that appointed County officials, who served at the pleasure of the County Executive, were prone to finding new employment during the waning days of his tenure. In order to complete his extensive legislative and administrative program and in order to discourage the departure of key appointed personnel, Mr. Lighthizer directed his Chief Administrative Officer and his Personnel Officer to come up with a manner of inducing the appointed officials to stay in their positions. (JA 271). He anticipated that such inducement would be in the pension area. (JA 273). The Chief Administrative Officer and Personnel Officer came up with the concept for portions of Bill No. 36-89 that dealt with the County Retirement Plan for Appointed and Elected Officials (the "A&E Plan"), which made the receipt of significant additional benefits dependent upon the official remaining in service at least another year, until July 1, 1990.

To the knowledge of the Personnel Officer, no bill had ever before been submitted to the Anne Arundel County Council that had an effective date significantly in the future, and this bill's effective date was more than a year in the future (JA 275). Bill No. 36-89 was made applicable only to those officials who retired more than one year later to induce appointed officials to remain in service during the ending days of the Lighthizer administration. It worked; the officials largely remained. (JA 276). The bill ended up benefitting 82 persons.

Before drafting Bill No. 36-89, the Lighthizer administration made sure that the County could afford the increased cost of the benefits to be conferred (JA 272), and Mr. Lighthizer, who did not benefit by one cent by the passage of the legislation (JA 274), was satisfied that it was financially responsible. (JA 272). The economy generally and the economy of the County in particular were then in excellent condition. (JA 270). In 1989, Anne Arundel County had a budget surplus of between $40,000,000 and $50,000,000. (JA 270-71). In fact, at least since the mid-1960's and through 1994 at least, the County never had a budget deficit, and, on top of its annual surplus, the County kept a $10,000,000 "rainy day fund," to cover unbudgeted contingencies. (JA 281).

Bill No. 36-89 reduced the normal retirement age for A&E Plan participants from 60 to 50, and increased the annual benefit accrual rate for those officials from 2% to 2 1/2% of final earnings for the first 20 years of credited service. The increase in the benefit formula served to make A&E Plan benefits equal to those benefits available to police, firefighters and correctional officers under their respective retirement plans, as had been the case before those Plans' benefits were increased. The latter plans covered approximately 1,200 employees.

All of the Respondents in this case were officials who participated in the A&E Plan and who retired on or after July 1, 1990, either at age 50 or after completing 16 years of service, with more than five years of credited service with the County. Therefore, pursuant to the A&E Plan, as amended by Bill No. 36-89, the Respondents became vested in their right to receive the pension benefits under the Plan on the date of their respective retirements. Further, every Respondent except one (who is not yet eligible) is already receiving retirement benefits under the Plan.

Through the late 1980's, the A&E Plan was over 100% funded. Around that time, however, the Plan began to become increasingly underfunded. By 1991, for example, the Plan was underfunded by $2,354,153.[1] (JA 287). That underfunding resulted primarily from the mandatory statutory provisions regarding service transfers. Specifically, many of the new officials in the new administration of County Executive Robert R. Neall were appointed from the ranks of State government, and, under the Maryland Code, although they received full credit in the A&E Plan for their State service, no funds were transferred from the State Retirement System to this Plan to cover the cost of funding the retirement of these individuals.[2]

---

1. It is not at all unusual for a County pension plan to be underfunded. (JA 282). For example, as the June 30, 1990 audited financial statement reflects, the County's General Employee (Classified) Plan was underfunded by $7,355,773, the Police Plan was underfunded by $11,735,201, and the Detention Center Plan was underfunded by $1,484,209. (JA 287). Underfunding is not unusual, and hardly connotes the desperation that the County suggests. In fact, upon information and belief, in 1989 the Maryland State Retirement Fund was underfunded by almost $6 billion.

2. The County Auditor of 29 years estimated that these transfers alone immediately contributed approximately $4.5 million to the underfunding of the A&E Plan. (JA 284-85).

At the time of the hearing on Bill No. 36-89 in 1989, the testimony was that the changes to the A&E Plan made by that ordinance would result in an annual cost of approximately $275,000. JA 125 provides the Valuation Results for the A&E Plan as of 1991. Specific reference is made to the fact that the cost of funding the A&E Plan had increased from $626,765, before consideration of the impact of Bill No. 36-89, to $810,589, after consideration of that ordinance's impact (a difference of approximately $183,824). In other words, the actual cost of Bill No. 36-89, as determined by the Plan actuaries after the Lighthizer administration was over, was *less* than estimated, and quite obviously, not the primary cause of the substantial "underfunding" asserted by the County.

In addition, in 1991 Mr. Neall and the Anne Arundel County Council proposed and enacted legislation to allow very substantial increases in the salaries of their new appointed officials. (JA 28, 85). Bill No. 4-91, one of the first ordinances passed in the Neall administration, increased the base salaries of Neall Administration appointees from 115% of base to 135% of base (JA 277-78), an increase of over 17%. The reason for the increase was that in comparison with State appointed officials, even considering the retirement benefits under the A&E Plan, County appointed officials were *underpaid*. (JA 277-80). These actions, in concert, resulted in the greatest proportion of A&E Plan underfunding. (JA 282-86).

After the underfunding of the A&E Plan became a political issue, then County Executive Neall, the Pension Oversight Commission, and the County Council all sought guidance as to the legality of contemplated retroactive legislative changes to the A&E Plan.

On October 18, 1993, Piper & Marbury, an eminent Baltimore law firm, issued a 51-page opinion letter to Mr. Neall, the then County Executive. The Piper & Marbury opinion letter concluded that legislation such as here at issue, to retroactively reduce pension benefits, would be illegal. (JA 182-232). On November 12, 1993, Steptoe & Johnson, an eminent Washington, D.C. law firm, issued an opinion letter to the Chairman of the Pension Oversight Commission, and concluded that a court would likely find that the proposed abrogation of the County's pension obligation would be illegal. (JA 233-242). On April 21, 1994, the Anne Arundel Deputy County Attorney issued his opinion that "the 'reserved power' of the County Council does not include the right to make retroactive reductions in benefits under the [A&E Plan], or to divest participants of benefits which have already accrued."[3] (JA 243-54).

3. On December 30, 1993, the Maryland State Attorney General (Cont'd)

On September 18, 1995, the County Council introduced Bill No. 74-95. Although the Pension Oversight Commission unanimously recommended *against* the passage of Bill No. 74-95, that ordinance was passed and signed into law by the County Executive on November 15, 1995. In short, Bill No. 74-95 operated retroactively to repeal the changes made by Bill No. 36-89, by, *inter alia*, increasing the normal retirement date to the earlier of age 60 or completion of 16 years of service and decreasing the benefit formula for appointed officials from 2 1/2% to 2% of final average earnings for each year of credited service not in excess of 20 years. The impact of Bill No. 74-95 was to cause immediate termination of some Respondents' retirement benefits then being received and relied upon by those Respondents, and to decrease significantly the pension payments of the other Respondents.

The retroactivity of Bill No. 74-95 was the same fault determined to be illegal in the opinion letters of Piper & Marbury, Steptoe & Johnson, and the Deputy County Attorney of Anne Arundel County. Bill No. 74-95 is the legislation that is the subject of this Petition; it is the legislation that was determined by the Circuit Court for Anne Arundel County to be likely illegal when it entered the ex parte and interlocutory injunctive relief against the implementation of the law (JA 65-66), and determined by the District Court and the Fourth Circuit to be an illegal retroactive reduction of retirement benefits in violation of the Contract Clause.

(Cont'd)
issued a letter to Delegate Joan Cadden, which letter was incomplete and included attenuated analyses, but concluded that retroactive amendment was legal. (JA 172-79). The Attorney General letter was specifically *not* an opinion of the Attorney General, and is not accorded the dignity of such an opinion. (JA 255-60). The County Attorney's 1994 opinion properly referred to the Attorney General's letter as an "informal letter of advice," and gave that informal letter the limited credit it deserved. (JA 247).

B. The petition misrepresents the alleged "misconduct" by County appointed and elected officials.

Leaving aside the adjectives and hyperbole, the "facts" asserted as misconduct by the County are inaccurate or, in some cases, not the acts of elected or appointed officials.

Concerning the enactment of Bill No. 36-89, the County suggests that pre-enactment advertising violated the Maryland Constitution (Petition at 6, 19), as if this evidences some premeditated malfeasance. The County fails to advise this Court that as of that time, most legislation passed by the County Council arguably violated the Maryland Constitution because until 1995, the County was misreading the requirements of the Maryland Constitution. *See Schaeffer v. Anne Arundel County*, 338 Md. 75, 656 A.2d 751 (1995). The advertising of Bill No. 36-89 was done no differently than other County ordinances, and the method of advertising was defended by the County as proper until 1995. *Id.*

The County suggests that there was some wrongful failure to convene a meeting of the Pension Oversight Commission. (Petition at 6, 19). However, nothing governing the actions of that Commission required it to act after a meeting. In this instance, the Chairman of the Commission asked that its available members be polled via telephone. (JA 109-10, 151-52, 155-56). The idea to poll members via telephone was entirely his, and not the suggestion or notion of any elected or appointed official of the County. (JA 109-10).

The County also suggests that the report on Bill No. 36-89's fiscal impact was wrongly withheld. (Petition at 7, 19). Not so. Indeed, the County Auditor did not forward to the County Council a letter relating that the Assistant County Auditor had insufficient information to form an opinion about the cost of

Bill No. 36-89, and the County insinuates that "a fair inference" is that the letter was not sent for an improper reason. There is nothing fair or accurate about the suggested inference; instead, what is clear is that the letter was not sent because by the time of the Council hearing the letter was already known to be inaccurate, as the correct information from the actuaries about the fiscal cost of the ordinance had actually been provided to the County Council. (JA 276).

In addition, the County suggests that the failure of "a formal report" to include the increased benefit accrual rate and reduced retirement age "suggest(s) complicity of numerous appointed and elected officials at the pinnacle of their power." (Petition at 7, 19). In fact, the report was prepared by the Plans' actuaries, not by any County officials, and suggests merely that they, the actuaries, made a human error, an error that impacted on nothing. Bill No. 36-89 had already been enacted.

Of course, even assuming the truth of all of the County's factual assertions, the opinions of the Fourth Circuit and the District Court were still correct.

REASONS FOR DENYING THE WRIT

The petition attempts to impose a new standard for Contract Clause analysis in this case, in direct contravention of established Federal and State law, and does not warrant review by this Court. The decision below was a plainly correct application of settled law, and no conflict among the circuits is even alleged.

I.

THE FOURTH CIRCUIT AND THE DISTRICT COURT PROPERLY APPLIED MARYLAND LAW ON POINT, WHICH LAW IS CLEAR, UNDISPUTED, AND DISPOSITIVE OF THE ENTIRE QUESTION PRESENTED.

For purposes of Contract Clause analysis, courts look to state law to determine whether a contract exists, and the law of the state in which the legislation was enacted is determinative. *Kestler v. Board of Trustees of No. Carolina Gov'tal Employees' Retirement Sys.*, 48 F.3d 800, 803 (4th Cir.), *cert. denied*, 116 S. Ct. 186 (1995) (citing *Baker v. Baltimore County*, 487 F. Supp. 461, 466-67 (D. Md. 1980), *aff'd*, 660 F.2d 488 (4th Cir. 1981)). In this case, the state is Maryland.

Under Maryland law, pension plans create contractual duties toward persons with vested rights under the plans. *Board of Trustees of the Employees' Retirement Sys. v. Mayor and City Council of Baltimore*, 317 Md. 72, 562 A.2d 720, 733 (1989), *cert. denied sub nom.*, *Lubman v. Mayor and City Council of Baltimore City*, 493 U.S. 1093 (1990); *see Davis v. Mayor and Alderman of City of Annapolis*, 98 Md. App. 707, 635 A.2d 36, 40 (1994); *City of Frederick v. Quinn*, 35 Md. App. 626, 371 A.2d 724, 726-27 (1977). More specifically, as the County concedes in its petition, a statutory pension plan for government employees creates contractual rights to pension benefits. (Petition at 14); *Quinn*, 371 A.2d at 726-27.

It is equally well established in Maryland that a public employee who has satisfied all conditions precedent to receipt of his or her retirement benefits may not have those benefits retroactively withdrawn by legislation. *Quinn*, 371 A.2d at 726-27; *Baker*, 487 F. Supp. at 468-69 (the City "would have no

more right to withdraw retroactively the pro rata pension benefits that had accrued than it could demand repayment of the salary the employees had earned and had been paid"); *Maryland State Teachers Ass'n, Inc. v. Hughes*, 594 F. Supp. 1353, 1363 n.6 (D. Md. 1984) (under State law "the State has no 'right to withdraw retroactively the pro rata benefits that [have] accrued,' but the State may modify prospectively the amount of benefits"; *Davis*, 635 A.2d at 40 ("[t]he rights which have accrued under the terminated plan may not be retrospectively withdrawn from [the employee]").

The County, in fact, conceded this point below, admitting that

> under Maryland law as explicated to date, the "reserved legislative power" to make modifications in a pension plan may not extend to eliminating benefits in which a participant has already vested, or which a participant otherwise has "earned by satisfactory service."

(Fourth Circuit Brief of Appellant at 37).

It is undisputed that the County imposed contractual obligations on itself and created contractual rights in favor of all officials who participated in the A&E Plan. It is undisputed that all of the Respondents are participants in the A&E Plan who not only have fulfilled the conditions necessary for retirement but also have retired from County service. And, all of the Respondents (except one, who is not yet eligible) had already begun to receive their retirement benefits under the Plan at the time of passage of Bill No. 74-95. It is equally undisputed that the County has endeavored to divest the Respondents of those vested benefits *retroactively* through Bill No. 74-95.[4]

4. The County disingenuously suggests that Bill No. 74-95 was (Cont'd)

Consequently, Maryland law strictly and unquestionably prohibits the County from seeking to do what it seeks to do through Bill No. 74-95. As the Maryland Court of Appeals has already determined with regard to the exact pension plan here at issue, the A&E Plan participants such as the Respondents "derived pension benefits which have accrued, become fully vested, paid to them, and which *cannot* now be diminished." *Schaeffer v. Anne Arundel County*, 338 Md. 75, 656 A.2d 751, 755 (1995) (emphasis added). Having two years ago sought exactly this result before Maryland's highest court, the County removed this case to the Federal District Court seeking exactly the opposite result: a decision that the benefits can be diminished retroactively. Apparently, the County is not concerned with principles of res judicata or judicial estoppel.

Maryland law is controlling and directly on point. Given Bill No. 74-95's retroactive repeal of the Respondents' vested and accrued pension benefits under the A&E Plan, there are no circumstances under which that ordinance could be held valid under Maryland law.

(Cont'd)
prospective in effect because it did not attempt to recoup benefits already paid. This argument ignores that Bill No. 74-95 retroactively reduced or withdrew the Respondents' retirement benefits that had already been vested, earned and accrued. Indeed, by its own terms, Bill No. 74-95 was intended to operate with retroactive effect. (App. 59a-60a: "the modifications enacted by this Ordinance . . . shall apply retroactively to all individuals who have retired before the effective date of this Ordinance . . .").

II.

THE COUNTY'S PETITION PROVIDES NO COMPELLING REASON FOR THIS COURT TO GRANT CERTIORARI.

The petition asks this Court to grant certiorari in order to provide guidance as to the "proper balance" between the Contract Clause's limitation on state action and the "necessarily reserved" power of a state to provide for the welfare of its citizens, hoping for the Court to make new law. In so doing, of course, the County completely ignores its concession in the lower federal courts of Maryland law on point. Instead, the County argues that this Court should overrule established Maryland law and confine this case to a constitutional balancing test, using as the fulcrum the County's ambiguous and never-before-recognized purpose of "the elimination of ill-gotten gains."[5] (Petition at 12). The County's argument is wrong on its face, and provides no compelling reason for this Court to grant the petition.

The County chiefly relies upon the general law of contracts in an attempt to demonstrate that Bill No. 36-89, which is not the ordinance originally attacked by the Respondents under the Contract Clause, somehow did not give rise to a contractual obligation to provide pension benefits to the Respondents. This argument makes no sense and should be accorded no weight, for two reasons.

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5. As detailed above, the legal issues of the existence of an enforceable contract and the protected status of vested retirement benefits of public employees have been well settled by the Maryland State courts adversely to the County. The County removed this case from the Circuit Court for Anne Arundel County to the U.S. District Court for the District of Maryland (JA 75-77), removing also the possibility of attempting to change clearly settled State law.

First, this case is *not* about whether Bill No. 36-89 was properly enacted. This is beyond question (and beyond the scope of this case): that ordinance is law. *Schaeffer v. Anne Arundel County* involved a direct challenge to the enactment of Bill No. 36-89.[6] 656 A.2d at 751. In *Schaeffer*, less than two years ago, the County *defended* the enactment of the Bill and the process by which it was advertised. The Maryland Court of Appeals adopted the County's position that the attack on the legislation was barred by laches, and held that case "exemplifies exactly the type of potential prejudice that laches is designed to prevent," because "[a]ll participants in either pension plan who were hired, retired or continued employment . . . were also prejudiced by appellants delay in bringing his claim." 656 A.2d at 755.

Bill No. 36-89 is the law of Anne Arundel County. Under Maryland law, it creates contract rights. As such, the Fourth Circuit and the District Court properly rejected the County's "novel theory" that Bill No. 36-89 did not give rise to contractual rights and obligations, thus justifying its retroactive repeal through Bill No. 74-95. (App. 24a).

Second, the County's notion that because it claims a few individuals may have violated a duty, none of the A&E Plan participants are entitled to their retirement benefits is nonsensical. The involved County officials, maybe three or four individuals, did only what the County Executive properly requested that they do. They did not propose Bill No. 36-89. They did not vote on that ordinance. They did not pass that ordinance. Nor did they sign that ordinance into law. Rather, those few involved in any way with this legislation were performing their jobs within the scope of their authority and to

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6. Respondent McCann intervened and participated in that case as a party defendant, on behalf of himself and other similarly situated Plan participants. That case involved both the A&E Plan and the general Employees' Plan.

the best of their ability. The remaining 95±% of A&E Plan participants had absolutely nothing to do with the proposal, passage, or enactment of legislation and nothing to do with pensions.

Significantly, at oral argument before the Fourth Circuit, the County acknowledged that there was no evidence of fraud or criminal conduct on the part of any of the Respondents or any other official of County government. Even if there were evidence of such misconduct (which the Respondents unequivocally deny), however, the notion of the County's seeking to punish the many for the alleged "misconduct" of the few is anathema that is unacceptable in our society. The County suggests that the acts of three or four individuals who implemented the plan of the County Executive, who himself did not benefit from that plan, are tantamount to a grand conspiracy of all elected and appointed officials, simply because it disagrees philosophically with the result, or because the additional benefits make an expedient election issue.

If the County wants to claim that a few people did something wrong, breached some duty, or ignored the public trust, it still cannot punish every participant in the system. As the Deputy County Attorney himself pointed out in his opinion letter to the Chairman of the County Council in April of 1994,

> any attempt to single out an official ["with policy responsibility for pension issues"] is likely to be futile, expensive, and a distraction from the things which *can* be done . . . [W]hat needs to be kept in mind is that each of these changes was effected by publicly-aired legislation enacted by the County Council . . .
>
> . . . [T]he concept of "fiduciary responsibility to act in the County's best interest" is not susceptible to the

> type of precise, legal application which would be necessary in order to form the basis for some type of targeted legislative action . . . I don't know how you decide in a legally-defensible manner that one official was more culpable of "presumed knowledge of the fiscal impact of pension legislation" than another.

(JA 250-51).

The County wants this Court to determine that Bill No. 36-89, which is not the legislation the Respondents have attacked under the Contract Clause, did not constitute a contract with any of the Plan participants because of the acts of only a few of the Plan participants. No case anywhere has ever so held. Again, government pension benefits in Maryland are deemed in the nature of contract rights. *See Board of Trustees*, 562 A.2d at 733; *Quinn*, 371 A.2d at 726-27. The law is *not* that the benefits are in the nature of contract rights only sometimes, if the government currently in power thinks that is the way they should be treated.

Of course, even if Maryland law did not prohibit the County from retroactively stripping the Respondents of their pension benefits under the A&E Plan, the Fourth Circuit and the District Court correctly recognized that the County still failed to demonstrate either that an incorrect Contract Clause standard was applied or that the County satisfied the existing standard such that Bill No. 74-95 would be deemed permissible.

After it has been determined that a contract has been impaired, it must determined "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship." *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244 (1978). Then, "assuming there has been a substantial impairment of contract, it must be determined whether that

impairment is nonetheless permissible as a legitimate exercise of the state's sovereign powers." *Baltimore Teachers Union v. Mayor and City Council of Baltimore*, 6 F.3d 1012, 1015 (4th Cir. 1993), *cert. denied*, 114 S. Ct. 1127 (1994). Unlike with respect to state impairments of private contracts, deference to a legislative assessment of reasonableness and necessity involving public contracts is not appropriate "because the State's self-interest is at stake." *United States Trust Co. v. New Jersey*, 431 U.S. 1, 25-26 (1977).

There has never been a dispute in this case as to whether Bill No. 74-95's impairment of the Respondents' contractual right to pension benefits was substantial. The District Court expressly determined that it was substantial (App. 24a-26a), and the County has never argued otherwise at any level. Similarly, the District Court held that the County failed to demonstrate that Bill No. 74-95 was reasonable and necessary to serve an important public purpose.[7] (App. 26a-28a).

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7. The County argued below that its "important public purpose" in enacting Bill No. 74-95 was the restoration of the actuarial soundness of the A&E Plan. (App. 26a-27a). In fact, the A&E Plan was not actuarially unsound. Now, however, the County criticizes the District Court for applying that very argument to the test established by the courts for analyzing state action under the Contract Clause, complaining that the District Court "reduced the balancing test . . . to a purely economic analysis." (Petition at 12). In fact, the District Court correctly applied that test to the County's argument (such as it was), and determined that the County failed to make the requisite showings under the law.

For example, Bill No. 74-95 was utterly unnecessary not only because the County admitted that it is not and was not in any financial crisis or emergency (JA 39, 89, 399), but also because the District Court found that the County "failed to make a sufficient showing that the means which it has adopted to address its 'problem' is the least drastic available." (JA 398). The County elected not to address any alternatives that were

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The County does not even now argue that the established standards required to avoid violation of the Contract Clause have been met. Rather, the County argues for some new standard, which would allow the substantial impairment of contracts providing benefits for many people if one or two people act in a manner the new political party in power does not like. It has the color of politics, not law; it is bad in principle and likely worse in application. This proposed new, totally unprincipled and unreasonable "standard," is not now and cannot in the future be the law of this Land.

III.

THE COUNTY'S PETITION SHOULD BE DENIED.

Anne Arundel County's strained arguments to the contrary, the Fourth Circuit's per curiam, unreported opinion did not decide an important question of unsettled federal law. Nor has the Fourth Circuit decided an important federal question in a way that conflicts with relevant decisions of this Court or other Circuits. Rather, the Fourth Circuit properly upheld the District Court's cogent construction of the Contract Clause in a manner totally consistent with established Contract Clause precedent and state law.

(Cont'd)
suggested by the Respondents below, such as consolidating the A&E Plan and the County Employees' Retirement Plan, issuing pension liability funding bonds, or simply funding the A&E Plan from its cash surplus. (JA 398, n.11). And, Bill No. 74-95 was not reasonable because it narrowly targeted a specific group of employees and operated with a permanency that, if allowed to stand, would have profoundly impacted the Respondents for the rest of their lives, and beyond. (JA 35-37, 43-44, 70-72).

CONCLUSION

For the reasons set forth above, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

GLENN M. COOPER
Counsel of Record
DAVID M. ROTHENSTEIN
PALEY, ROTHMAN, GOLDSTEIN,
ROSENBERG & COOPER, CHARTERED
4800 Hampden Lane
Seventh Floor
Bethesda, Maryland 20814
(301) 656-7603

Counsel for Respondents